

1 UNITED STATES BANKRUPTCY COURT  
1 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
2 CHARLOTTE DIVISION  
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3  
4 IN RE: )  
4 )  
5 GARLOCK SEALING TECHNOLOGIES )  
5 LLC, et al, ) No. 10-BK-31607  
6 )  
6 Debtors. ) VOLUME IB - AFTERNOON SESSION  
7 \_\_\_\_\_ )  
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8 TRANSCRIPT OF ESTIMATION TRIAL  
9 BEFORE THE HONORABLE GEORGE R. HODGES  
9 UNITED STATES BANKRUPTCY JUDGE  
10 JULY 22, 2013  
10  
11  
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1 MONDAY AFTERNOON, JULY 22, 2013

2 (Court called to order at 1:35 p.m.)

3 THE COURT: Okay. Mr. Swett, I believe it's your  
4 turn.

5 MR. SWETT: Thank you, Your Honor.

6 May it please the court, Trevor Swett for the  
7 Official Committee of Asbestos Personal Injury Claimants.

8 We are here in this proceeding to estimate in the  
9 aggregate the impact upon Garlock and tort creditors of  
10 Garlock's role in a public health disaster that has spanned a  
11 couple of generations now and will extend for decades into the  
12 future.

13 Millions of workers and families have been exposed  
14 to insidious toxic fibers. The products from which those  
15 fibers emanated were pervasive in the American workplace in a  
16 wide variety of industries and industrial settings. The  
17 products themselves were myriad and various. And many, many  
18 different companies were involved in their production, their  
19 dissemination, their installation, and sometimes their  
20 removal.

21 The sentinel disease caused by asbestos, meaning a  
22 disease which if it occurs, you've got to infer that there was  
23 asbestos exposure because asbestos is the only known confirmed  
24 cause of it, is mesothelioma, a devastating cancer of the  
25 lining of the peritoneum and the abdomen which leads

1       invariably to a painful death as those membranes, in effect,  
2       calcify, become cancerous and constrict the lung function of  
3       the person.

4               This has claimed many victims and will claim many  
5       more. Thousands have died. Thousands more will sicken and  
6       die on into the coming decades.

7               It's necessary at the beginning to clear out a  
8       little underbrush sewn by the debtors' opening statement.  
9       This case isn't about the non-malignance, but we don't for a  
10      minute concede that the wave of non-malignant claims that  
11      peaked in the early 2000s well before Judge Jack's vaunted  
12      decision in a silica case was illegitimate or fits the picture  
13      painted by the debtors in retrospect as manufactured claims  
14      for money that had no basis in law.

15              By and large, those claims were compensable under  
16      applicable non-bankruptcy law. If we were to wade into the  
17      disputes surrounding those claims, we would be getting into  
18      issues that have nothing to do with mesothelioma, which is the  
19      focus of this estimation under your order. So we decline to  
20      do that, but I don't want you for a minute to suppose that we  
21      concede Garlock's highly colored characterization of that  
22      phenomenon.

23              Instead, we focus on the legal consequences in the  
24      shape of the mesothelioma claims giving rise to lawsuits going  
25      back to the 1960s. Many companies were drawn in and held



1 responsible for contributing to the epidemic. The essential  
2 legal claims as the system evolved were negligence and strict  
3 liability for failure to warn despite known perils, proof of  
4 early knowledge, and the nature, the demographic, the human  
5 side of the people who fell victim to this disease. Those two  
6 things, early knowledge and the nature of the victims, made  
7 strong claims on the jury's senses of justice leading to many  
8 awards in cases that were fully tried. A not inconsiderable  
9 number of awards that were very large and placed many  
10 defendants, including Garlock, at risk of punitive damages.

11 As a result, no fewer than 50 companies have gone  
12 bankrupt since the early 1980s when the first major asbestos  
13 bankruptcy, that of the principal leading manufacturer,  
14 accounting by Mr. Harris's telling of some 60 percent of the  
15 market share in most asbestos products, Johns-Manville  
16 declared bankruptcy.

17 Garlock has been a defendant in the tort suits  
18 almost from the beginning. Its litigation plight is not some  
19 arbitrary happenstance or accident of history, but results  
20 from its sale over the course of many decades of  
21 asbestos-containing gaskets and packing going back many, many,  
22 decades.

23 Now, it's interesting that the debtors chose to  
24 begin their opening by showing you a movie of somebody banging  
25 on insulation and watching the snow fall, especially when

1 later in the same argument the same counsel asserted that the  
2 asbestos fibers are invisible. But what he didn't tell you is  
3 that by and large asbestos installation was no more than  
4 15 percent asbestos. The rest was other substances. That's  
5 not invariably true but largely so.

6 By contrast, Garlock's gaskets, those that contained  
7 asbestos, were between 60 and 80 percent of asbestos in  
8 concentration. So the dust phenomenon surrounding insulation  
9 and the dust phenomenon surrounding gaskets is different but  
10 not in the way that the debtors said.

11 Garlock's products were widely used and distributed.  
12 They were highly recognizable.

13 If I could have Mr. Walker show the first slide.

14 This is from Dr. Bates' report. He says, "In fact,  
15 Garlock's marketing department was so successful in its  
16 branding efforts that certain kinds of industrial gaskets were  
17 often called "Garlocks" in the same way that Kleenex or Jello  
18 are commonly used words in place of facial tissues or gelatin  
19 dessert."

20 And he continues, "As a consequence, beginning in  
21 the 1980s, Garlock was named in thousands of asbestos personal  
22 injury lawsuits each year."

23 The only thing he got wrong there is that if he  
24 meant to imply that the litigation against Garlock didn't  
25 begin until the 1980s, that's not correct. It was earlier

1     than that. But the point of the statement is Garlock's highly  
2     recognizable, conspicuously branded, pervasive products are  
3     among the easier ones for workers to identify decades later  
4     when things that were of no moment back in the workplace when  
5     they were doing their work take on significance in the  
6     litigation of the question of where their mesothelioma came  
7     from and what products and substances contributed at the time  
8     to the causation of the disease.

9             Your Honor has heard all this in one way or another  
10     over the course of what might be jocularly described as a  
11     three-year opening statement from the various parties.

12            But now we come to the estimation itself.  
13     Estimation is needed because to make a confirmable plan, we  
14     must first measure the entitlements of the creditors as they  
15     would exist if there were no bankruptcy. The argument has  
16     been made that that is contrafactual. But it's a requirement  
17     of the code because one thing bankruptcy is not supposed to be  
18     is a windfall for debtors. The mere filing of bankruptcy is  
19     not supposed to affect the value of claims.

20            I'm reminded of a Third Circuit case where the party  
21     interested in preserving equity argued that the bonds should  
22     be valued not at their face but at the lower levels that they  
23     traded down to as the debtor's financial distress became  
24     evident and as bankruptcy approached. And not surprisingly,  
25     the court rejected that argument and said that for purposes of

1 measuring the debtor's obligation before we get to whatever  
2 adjustments may be adopted through the consensual processes of  
3 bankruptcy, we have to measure the liability as it existed  
4 before the bankruptcy, outside of the bankruptcy court.

5 And here, of course, all parties are looking to a  
6 524(g) plan. That's an imperative. It's absolutely necessary  
7 because so much of the disease and so much of the liability  
8 lies in the future. And because Congress says that before  
9 this debtor can emerge from the chapters, in effect, cleansed  
10 of its tort legacy, it must fund the trust on a basis that  
11 provides equality between present claimants and future ones  
12 and that is overall fair and equitable to the future  
13 claimants.

14 And so it's necessary to measure by way of  
15 estimation not the value or worth of any individual claim but  
16 the collective aggregate of those values. And it is not  
17 necessary to measure them individually and add them up in  
18 order to get to the aggregate. In fact, that, under the case  
19 law, is not the favored method. It has been recognized, for  
20 example, in the Federal-Mogul case that to do an estimation  
21 process unduly focused on individual claims is to risk  
22 violence to the due process rights of claimants who are not in  
23 the courtroom when the estimate is made and who do not  
24 participate in that process.

25 And one thing we must not forget in the course of

1     this aggregate estimation, that phrase is not something to  
2     which we merely pay lip service. It goes to the substance of  
3     what the court is undertaking to do. And it limits  
4     necessarily the appropriate focus that the court should have  
5     and it instills appropriate forbearance.

6             When invited to stray into the nitty-gritty issues  
7     that might arise in an individual claim, to say who shot John;  
8     who's right, who's wrong; which substance is harmful and which  
9     isn't, would be to stray into the terrain of individual claim  
10    litigation. It is not suitable for aggregate estimation. It  
11    cannot be fairly litigated in this context. It can only be  
12    fairly litigated in a traditional tort suit with a real  
13    plaintiff and a real defendant and a real jury where the  
14    parties are both at risk of the decisions, the judgments to be  
15    made by juries in the traditional manner of our system of  
16    justice.

17            We deal here in something different. And when you  
18    are invited, they say, well, we're not asking you to resolve  
19    the merits of any of the scientific disputes, for example.  
20    But then out of the other side of their mouths tell you that  
21    you should estimate low because of the scientific defenses.  
22    They are, in effect, asking you to embrace their defenses on  
23    the merits, hold against the whole collectivity of claimants  
24    on those subjects and tamp down the estimate to their eventual  
25    prejudice when it comes to distributing the assets of the

1 estate. It is a promiscuous approach. It mixes apples and  
2 oranges. It is a convenient effort at obtaining a trapdoor  
3 out of the tort system so that the -- that these issues can  
4 somehow be litigated in the absence of the people who matter  
5 when it comes to the claimants' side of the issues. That  
6 would be neither fair nor constitutional.

7 And I emphasize, it's not a matter of lip service.  
8 We can't avoid the necessity to refrain from implicating the  
9 rights of individuals just by calling it aggregate estimation  
10 and proceeding willy-nilly to do what we would do to decide  
11 merits up or down in a way that is eventually going to be  
12 visited upon those individuals.

13 And so the appropriate focus here must not be on any  
14 selection of individual cases but on the aggregate. And you  
15 have framed the issue in your order as what would it cost to  
16 resolve the allowable claims or the claims eventually to be  
17 allowed because you have seen 502(c) of the code as the source  
18 of your authority to estimate.

19 And that is as it ought to be. No one here is  
20 saying that you should put value on claims that would not be  
21 paid if there were no bankruptcy. Our method of estimation  
22 and Dr. Rabinovitz's method of estimation gives Garlock full  
23 credit for the considerable extent to which it was able to  
24 dismiss claims in the tort system without payment when after  
25 the claim was fully developed, calling the plaintiff lawyer

1 and persuading them to withdraw the case because they didn't  
2 have product identification evidence linking their disease to  
3 Garlock.

4 They're fully entitled in the context of an  
5 aggregate estimation to take account of a reasoned,  
6 appropriate calculation of that dismissal rate and we give it  
7 to them. Something like 40 percent of the claims brought  
8 against them for mesothelioma in recent times have ultimately  
9 been dismissed without payment and we're not fudging that  
10 number.

11 It's another thing all together to say that you  
12 should throw out thousands of claims because the questionnaire  
13 responses are not to the debtors' liking or do not display at  
14 the random moment when the questionnaire responses are sent in  
15 evidence of product identification that would get the  
16 plaintiff to a jury in the tort system. Why is that? Because  
17 the questionnaires are a snapshot. They're a snapshot and a  
18 random arbitrary moment unrelated to the pace of the  
19 litigation in the tort system where against the backdrop of a  
20 reality in which the debtor in prebankruptcy times and  
21 practices did not require most of the claims to be worked up  
22 at all before it would settle them.

23 And that's not to say they've just paid junk. They  
24 did require product identification evidence before settling.  
25 But they did not do so in the arbitrary manner in which the

1 questionnaires, if taken as devices for excluding claims,  
2 would operate. Because the claimants in the bankruptcy  
3 haven't had discovery of Garlock. They haven't gone through  
4 the discovery workup that those few cases that would be on a  
5 trial track in the tort system would go through. They're not  
6 at the end of the process. And you can't draw rational  
7 inferences from a snapshot to what the movie will look like at  
8 the end. That's what they do as a device for tamping down  
9 their estimate by excluding thousands of claims.

10 But again, this is not the trial in absentia of  
11 holders of claims of mesothelioma. Nor is it some notional  
12 summary judgment process, properly speaking, where you can  
13 dispose of the rights of people who aren't here by supposing  
14 that if and when called to respond to a summary judgment  
15 motion, they wouldn't be able to meet it after appropriate  
16 discovery.

17 Instead, the touchstone of relevancy in the  
18 estimation ought to be the impact on the aggregate value of  
19 any given fact or trend or proposition that the parties may  
20 advance. After all, we don't write on a clean slate in this  
21 proceeding. There have been 50 of these cases before. There  
22 are many 524(g) plans confirmed and in effect.

23 We also here are proceeding in a legal context where  
24 the supreme court teaches that the bankruptcy court must take  
25 the claims as they exist under applicable non-bankruptcy law,



1 a subject on which we have at least rhetorical agreement  
2 between and among the parties.

3 I thought I heard Mr. Clodfelter acknowledge as well  
4 that that premise implies that the claims are to be valued for  
5 the value that they would have under non-bankruptcy law and  
6 non-bankruptcy settings. And that's true. And that goes back  
7 again to the idea that bankruptcy isn't supposed to be a  
8 windfall or a device for the nonconsensual depreciation of the  
9 claims.

10 When we bring the supreme court learning to bear in  
11 an asbestos bankruptcy, as many courts have done, we learn  
12 that the focus has been on the debtor's own claims resolution,  
13 claims experience and resolution history. As well it might be  
14 that the essential resource for estimation, because those are  
15 the data that describe the reality of the claims, the reality  
16 of their values, and the reality of the debtor's financial  
17 plight.

18 And when we proceed through Dr. Peterson to put on  
19 an estimation in the usual way derived from the debtors' own  
20 actual history, bringing to bear appropriate judgments that  
21 can be vetted and debated and argued about and made the  
22 subject of findings by Your Honor, our expert comes forth with  
23 the preferred estimate of about \$1.2 billion as the amount it  
24 would take Garlock to resolve the claims, present and future,  
25 expressed in present value as of the petition date. And that

1 is exclusive of defense costs. They're not included.

2 And contrary to Mr. Cassada's suggestion, there is  
3 nothing shocking or out of line about that figure when you  
4 consider that between 2006 and 2010 alone, if you annualize  
5 the 2010 figure, Garlock paid no less than \$320 million for  
6 mesothelioma claims alone to resolve them and avoid trial.

7 The figure actually also includes the results of the  
8 trivial number of cases that were tried to verdict and  
9 resolved by judgment instead of settlement.

10 And the central fact of the estimation ought to be  
11 that there is overwhelming evidence of how Garlock, in fact,  
12 valued and disposed of mesothelioma claims in the tort system  
13 before bankruptcy. And that method was by consensual means.  
14 Either they persuaded the plaintiff to withdraw for lack of  
15 product ID evidence or adequate medicals, or they settled for  
16 payment all but a tiny handful of the rest.

17 And when you are asked to consider, for example,  
18 that Garlock won 92 percent of its cases, or whatever the  
19 first figure was, in the decade of the 1990s or 75 percent of  
20 the cases if you extend that period to the time of bankruptcy,  
21 you must see that against the backdrop of this widespread  
22 settlement program which overwhelmingly was Garlock's method  
23 of valuing and disposing of the claims. Because Garlock, like  
24 any intelligent, well managed defense effort, which this was,  
25 will settle the claims it perceives to be most dangerous.

1 Will avoid the risk of trial in those instances and will only  
2 suffer trial if it can't get a reasonable settlement demand,  
3 one that it recognizes as such in a case where its -- where  
4 the risks presented do not seem to be prohibitive. They will  
5 settle the good plaintiff's cases. The plaintiff's cases that  
6 are forced to trial by and large will be more debatable, more  
7 questionable, more fodder for the jury to determine.

8 And that's what gives rise to the win/loss  
9 percentages that are apparent in Garlock's verdict history.  
10 When 99.7 percent of the cases settle, as Mr. Guy said, you  
11 can bet that the cases that the debtors thought were of  
12 greatest risk to it are among the settled ones.

13 Now, the database and testimony will further show  
14 that the settlements break down, broadly speaking, into two  
15 categories. There are group settlements pursuant to protocols  
16 for resolving large numbers of cases based upon certain  
17 essential attributes without intensive development or  
18 litigation of more nitty-gritty details.

19 The evidence will show that Garlock from a very  
20 early stage entered into arrangements with a wide array of  
21 plaintiffs' law firms that account for the lion's share, far  
22 and away the lion's share of the resolutions, where Garlock  
23 was choosing to settle early because that's when you get the  
24 best price and that's when you cut off the ongoing defense  
25 costs, and that's when you best hedge your risk. That's the

1 style they approached settlement in most of the time.

2 A much smaller group of cases were developed as --  
3 for trial and were settled on the basis of developed records  
4 and were negotiated individually or in small groups. That, of  
5 course, is a much costlier process for plaintiffs as well as  
6 for defendants. And it produces much higher settlement values  
7 for successful claims if they are prepared and resolved in  
8 this way.

9 And it is this last very small set of claims that is  
10 the focus of Garlock's attack on the standard approach to  
11 estimation that we take in line with precedent. And the  
12 precedence that we rely on include most recently the Bondex  
13 decision by Judge Fitzgerald in which she embraced the  
14 essential methodology that Dr. Peterson applied there as here  
15 and that Dr. Rabinovitz applies.

16 And I'm sorry to say that Mr. Cassada is misinformed  
17 about what it was that was litigated in Bondex. It is not the  
18 case that Bondex agreed to have the estimation made on the  
19 basis of its settlement information. It too filed a motion to  
20 exclude that kind of evidence under Rule 408. It too put on  
21 evidence that in its view chrysotile from the joint compound  
22 that was its product could not cause mesothelioma. And you've  
23 read the decision, I feel certain, and you have seen that  
24 Judge Fitzgerald ruled to the contrary based upon the record  
25 in that case.

1           Now, the significance for estimation of Garlock's  
2 resolution history, of course, goes beyond the valuation that  
3 you should apply to pending claims and extends into the  
4 future. Why is that? Because no one doubts that if you  
5 returned Garlock to the tort system today, tomorrow they would  
6 be resolving and valuing claims in the same way that they did  
7 before they filed, which is by and large by settlement, with  
8 vanishingly few trials now and until the end of the problem.

9           Indeed, a close reading of Garlock's own trial brief  
10 tells you that they recognized this reality because they  
11 predict that under their plan, which involves passing claims  
12 through for litigation under tort rules, most of them would  
13 settle. Very few would actually go to trial according to  
14 them. The difference is that on the way through the  
15 bankruptcy court, they would change the rules.

16           Mr. Clodfelter's presentation essentially admits  
17 this. It would change the way in which the claims are handled  
18 and litigated and it would tilt the table in favor of Garlock  
19 and the equity and against the claimants. I submit to you  
20 that is not a legitimate function of bankruptcy. At least  
21 outside of consensual processes accepted by the creditors.  
22 And it is certainly not the appropriate function of  
23 estimation.

24           But against the legal and factual background that  
25 we've gone over, why do the debtors insist on a platonic

1 notion of legal liability and a newly invented approach to  
2 estimation that they first trotted out in Bondex with the  
3 results that you've seen in the Bondex opinion? The essential  
4 premise of which is that no, no, no. So that you're not  
5 basically counting cost avoidance as liability, you've got to  
6 notionally try the cases and you've got to further assume that  
7 the trials are free of cost to Garlock. You have to invent a  
8 conceptual world in which there are no transactions costs.  
9 There are no defense costs. There are no considerations other  
10 than what the jury will eventually find by way of liability or  
11 not.

12 Why would they do that when it is so contrafactual,  
13 to borrow their term.

14 And on that subject, I would like to show you what  
15 Tim O'Reilly, who ran Garrison up until 2003, ran the defense  
16 effort for Garlock, had to say on the subject of whether it  
17 would be a good idea to try to resolve all the claims by trial  
18 and verdict.

19 "Did you ever consider trying every case?

20 "Answer: Consider it, yes. And in early 1993 we --  
21 again, we, it was me, got aggressive and we did in very short  
22 order in early 1993 four phase-one meso trials with Perry  
23 Weitz on the other side and very quickly learned what  
24 \$75 million of verdicts looked like on phase one.

25 "Cost of defense is another issue. And if you went

1     into most asbestos judges' chambers, said you're going to try  
2     every case, you'd be crucified. You couldn't -- you could not  
3     try every case. A, you couldn't afford it; B, the courts will  
4     not give you the time to do it; and C, it would be economic  
5     suicide. So you could consider it, but it's not a viable  
6     option. It's not a level playing field out there for a  
7     defendant in asbestos cases at all.

8             "Question: What -- what would happen if you had  
9     tried all the cases?

10            "MR. CASSADA: Objection, calls for opinion.

11            "THE WITNESS: No offense, sir, it's a silly  
12     question. I just answered it.

13            "Question: What would happen?

14            "Answer: You couldn't do it. The judges would not  
15     give you ice time the trial -- to try the cases. You could  
16     not physically. Second of all, you wouldn't have the trial  
17     team to do it. And I had more trial teams at the end than any  
18     defendant in litigation.

19            "So, no, it's a question that is -- calls for a  
20     ridiculous answer because you couldn't try it, nor would the  
21     judges let you try it.

22            "Question: Was early 1993 the only time that you  
23     ever considered that strategy?

24            "MR. CASSADA: I'll object to the extent it calls  
25     for lawyer's mental impressions.

1           "Answer: Let's put it this way, we didn't try it  
2 again."

3           MR. SWETT: A few points about that, Judge. He was  
4 talking about an experience that he had in 1993. That's the  
5 era when, according to the debtors, they were living in clover  
6 when it came to defending their cases. He talked about a  
7 phase one trial. Phase one trial in New York City at that  
8 time was one where to avoid prejudice to the defendants, to  
9 avoid all the knowledge evidence and other liability evidence,  
10 they would try the plaintiffs' injuries first. He tried it in  
11 four cases back to back, and the result was \$75 million in  
12 damages that would have been visited upon Garlock had the  
13 plaintiff succeeded in the liability trial to follow. They  
14 didn't have to do that because the resolution was as you would  
15 expect. The result was a course of dealing between Garlock  
16 and that law firm that persisted until the bankruptcy case all  
17 the way from 1993. It did not involve trial. It did not  
18 involve discovery. It was an administrative process.

19           And when you think about Mr. O'Reilly's testimony  
20 that the judges wouldn't let you do what Dr. Bates insists you  
21 must do in your mind, if not in the real world, consider that  
22 there are roughly 5,000 pending mesothelioma claims.  
23 Supposing it were to take a week to try each one. That's  
24 5,000 weeks. That's 100 judge years. Consider that,  
25 according to Dr. Bates, it costs Garlock \$400,000 on average



1 to try such a case. Trying 5,000 cases, that's \$2 billion.

2 Apply the same metrics to the stream of cases that  
3 will unfold over the decades to come and you can well see why  
4 Mr. Clodfelter said this was unsustainable. And that is the  
5 very insight that caused Manville to go into bankruptcy in  
6 1992 -- I'm sorry, 1982. It was unsustainable then for the  
7 major manufacturer of asbestos products. And the notion that  
8 only trial can produce a fair valuation of the claims is  
9 contrary to all experience and common sense for Garlock as for  
10 all other asbestos defendants.

11 Indeed, let us suppose that we embraced Dr. Bates'  
12 assumptions that the decade of the 1990s would be a better  
13 period to measure Garlock's liability from because it avoids  
14 some things that the debtors say were distortions in the  
15 2000s. Let us suppose further that we were going to  
16 extrapolate from Garlock's verdicts given their actual rate of  
17 success, which approaches 92 percent. Said differently, that  
18 the plaintiffs would win just over 8 percent of the cases.  
19 And substitute for Dr. Bates' assumptions only this: That  
20 instead of spreading the verdicts across 36 defendants, we're  
21 going to spread them in -- proportionately to how, in fact,  
22 Garlock actually paid pursuant to the verdicts.

23 The resulting liability approaches Dr. Peterson's  
24 estimate based on settlements. If you apply more realistic  
25 assumptions, it vastly exceeds Dr. Peterson's estimates.

1 Trial is not a realistic way to value the cases and if the  
2 debtors' best interests truly be known and the assumptions be  
3 reasonable, it is a vastly disadvantageous manner in which to  
4 put a number on the debtors' liability here.

5 But Dr. Bates justifies it not as a -- he  
6 acknowledges that it's not a realistic proposition. He says  
7 it's an analytical construct to allow you somehow to isolate  
8 out from an integrated settlement number, a dollar figure, how  
9 much was for liability and how much for cost avoidance.

10 But to speak truly of this platonic notion of legal  
11 liability that the debtor favors, you can't speak in terms of  
12 the debtors' side of the view of what implicit in the  
13 settlement dollar is liability expectation. The only way to  
14 determine the liability would be to actually try it pursuant  
15 to their concepts.

16 Instead, you have to look at it from both points of  
17 view. The parties have different motives and different  
18 incentives to settle. They both have their costs. They both  
19 have their risks. They both have their own respective risk  
20 tolerance, their own appetite for trial, their own time  
21 valuation of money. And you can't unbake that cake, to borrow  
22 the figure of speech used in the debtors' opening. There's no  
23 way realistically to do it. What they're asking you to do is  
24 to adopt debtor-friendly premises and bring that to bear on  
25 that impossible deconstruction of the integrated settlement

1 dollars to arrive at a predetermined collusion, predetermined  
2 conclusion calculated to salvage equity that does not exist on  
3 a more realistic set of assumptions.

4 And far from analytical constructs, the supreme  
5 court teaches us that when it comes to matters of valuation,  
6 and this is a species evaluation, markets are to be preferred  
7 over experts. There is no occasion to apply complex economic  
8 modeling to a phenomenon that has been apparent to the courts  
9 for more than 40 years. And it cannot produce an estimate  
10 that in comparison to analysis of the data that actually  
11 exists can be reliable.

12 I'm going to borrow here an analogy that my friend  
13 Mr. Finch suggested to me. Mr. Finch is one of the lawyers  
14 who we engaged as special counsel to litigate the science  
15 questions. I should say to present the claimants' side of the  
16 science issues which are not to be litigated or adjudicated.  
17 But he said to me, you know, if you wanted to predict what the  
18 league wide batting average in the national league would be  
19 over the next five seasons, you wouldn't have to bring in  
20 major league ball players to give you batting lessons.

21 By the same token, you don't have to know the ins  
22 and outs of the scientific defenses, much less form a view as  
23 to who's right and who's wrong in order to come to the  
24 conclusion that the cases would resolve in the manner that  
25 they would given those defenses and the answers to those

1 defenses. And undertaking to do anything more with the  
2 science in this case would inappropriately trench on the  
3 rights of the victims who are not here and would lead the  
4 court into an area where it lacks expertise and will not be  
5 given an adequate record to decide from.

6           You know, the debtors like to quote the Moeller case  
7 and the bucket in the ocean as though this were a rule of law.  
8 Hell, you can never prove causation from a gasket when there  
9 is insulation around. That is not the meaning of the case.  
10 The case was a decision on a particular record with particular  
11 experts voicing particular conclusions on particular facts and  
12 assumptions where particular standards were brought to bear.  
13 It cannot be generalized in the manner that they do. It does  
14 not purport to articulate a rule of law, and certainly not a  
15 nationwide one.

16           Now, in the face of all this, what is Garlock's  
17 rationale for the quixotic approach that it would suggest to  
18 estimation?

19           Well, they say until 2000 Garlock was doing just  
20 fine as a peripheral defendant, forgetting that in 1993 they  
21 declined to proceed to trial in four cases in New York City  
22 because they were already looking at \$75 million in damages.  
23 Let's ignore that risk, they said.

24           But in 2000 a whole bunch of entities that they call  
25 the top tier or the big dusties went into bankruptcy which

1 changed the game to Garlock's unfair disadvantage, is their  
2 position. They were no longer able to depend upon the  
3 defenses put forward by those previously more prominent  
4 defendants. Their settlement prices went up, but they say  
5 they should have returned to pre-2000 levels once trusts came  
6 online and began paying the claims.

7 But Dr. Bates will concede to you that there is no  
8 information out there in the world today, years after the  
9 trusts began playing claims, that suggests that the effect of  
10 the trusts coming back and paying fractional recoveries on  
11 what their predecessor defendants would have paid in the tort  
12 system will have any material downward pressure on the  
13 settlement values of solvent defendants.

14 His only basis for saying that is discovery taken  
15 from the Delaware Claims Facility in this case and we will  
16 show you through Dr. Peterson that that data does not mean  
17 what he says and cannot bear the significance he attributes to  
18 it.

19 But they say, well, since they should have -- the  
20 prices should have come down but they didn't, there must be  
21 fraud going on. There is dissembling. The plaintiffs are not  
22 being forthcoming about the products they encountered and  
23 their lawyers are engaging in strategic dissembling to  
24 unfairly target Garlock. So we should resort to an analytic  
25 method, an elaborate economic model instead of deriving an

1 estimate from the historic settlement data even with  
2 adjustments. It's not good enough for that, they say.

3 Well, broadly speaking, here are the answers:

4 Far from being a unique, unprecedented situation in  
5 which Garlock or maybe a few other defendants along with it  
6 were isolated in the tort system by the bankruptcies of the  
7 early 2000s and put in a world of hurt because they were  
8 dragged to the center stage as targeted defendants, as lead  
9 defendants instead of merely peripheral ones, that's a false  
10 picture. This is a phenomenon that is the natural consequence  
11 of joint and several liability and even hybrid apportionment  
12 rules throughout the country, one of the fundamental premises  
13 historically of the tort laws.

14 And of the fact that the products that give rise to  
15 asbestos emissions in the workplace are so various and so  
16 numerous that no one could be expected to make the case  
17 against all at once, even if the case could be made were they  
18 ever devoted to it, to establish that product, that defendant  
19 as contributory to the disease.

20 Back when Manville's 60 percent market share  
21 asbestos manufacturer was an active litigant, why would a  
22 plaintiff expend time and resources chasing 30 other companies  
23 when they could gain satisfaction by their own measure of what  
24 just compensation would be by pursuing Manville or one or two  
25 others? They wouldn't do it. They, too, have prohibitive

1 costs that make litigation a burden and that impale the  
2 lawyers to adopt cost effective strategies within the limits of  
3 the law.

4 So instead of their being one bankruptcy wave in  
5 2000, there have been a series of waves from the beginning of  
6 the problem beginning with Manville's bankruptcy. When  
7 Manville went out of the system, there was a human cry by the  
8 co-defendants, much like the one Garlock raises here. And  
9 it's worth pausing to consider what the co-defendants in  
10 Manville moved that bankruptcy court to do by way of relieving  
11 them from precisely the dilemma that Garlock is now  
12 complaining about.

13 A bunch of co-defendants banded together to make an  
14 application to the bankruptcy court. Garlock itself was one  
15 of the movants. This is in 1982. They wrote that the court  
16 should extend the automatic stay to the whole system,  
17 nationwide, all defendants because it would be fundamentally  
18 unfair to force them to mount their defenses and incur those  
19 costs and those disadvantages in Manville's absence. And they  
20 wrote in their application -- I'm reading from paragraph 15 of  
21 Exhibit B to our trial brief. It's plaintiff's statement  
22 under Southern District Civil Rule 3(g) in Support of Motion  
23 for Summary Judgment. And they wrote as follows:

24 "Manville due to its pre-eminent position in the  
25 asbestos industry is the principal defendant and the most

1 important party in virtually all of the asbestos lawsuits.

2 "Manville as miner, processor, manufacturer, and  
3 supplier enjoys the largest market share in the asbestos  
4 industry. Manville has been the principal contributor towards  
5 settlements and judgments in asbestos lawsuits and taken the  
6 lead position among the defendants in acting as custodian of  
7 documents, furnishing witnesses, and securing expert testimony  
8 for all defendants.

9 "Manville's counsel has been the chief spokesman for  
10 the defense, coordinating and presenting the evidence on  
11 behalf of all co-defendants and assuming the principal role in  
12 settlement negotiations.

13 "Manville is possessed of the expertise, documentary  
14 evidence and witnesses essential to the trial of the action."

15 Essentially, they were saying it's no fair  
16 litigating these cases in Manville's absence. They were  
17 complaining of being deprived of the comfort of flying under  
18 the wing of the lead defendant, of availing themselves of a  
19 free ride on that defendant's defense efforts and the costs  
20 that it was absorbing and the settlements that it was paying  
21 so the plaintiffs would have no incentive to come after the  
22 other defendants.

23 And fundamentally, what Garlock is complaining about  
24 in this case is that it was deprived of that opportunity when  
25 the defendants who had become prominent years after Manville's



1       demise themselves were tapped out and went bankrupt.

2               But that is not a problem that can be taxed to the  
3       plaintiffs. That is in the nature of the tort system, of  
4       litigation, of complex personal injury claims involving  
5       multiple products and players where each side has its burdens  
6       and each side has its incentives and each side has its lawyers  
7       whose focus is on their client's best interests within the  
8       limits of the rules.

9               We will offer the testimony of Paul Hanly. Paul  
10       Hanly was the national coordinating defense counsel for Turner  
11       & Newall. Next to Manville, perhaps, the largest asbestos  
12       defendant in terms of its product output in the world. But  
13       Turner & Newall, as he will tell you, managed to stay low on  
14       the screen for many years. Entering into settlement  
15       protocols. Not forcing itself into the lime light. Not  
16       forcing cases to trial. Depending upon the efforts of  
17       Manville, and then later the Asbestos Claims Facility, a  
18       defense consortium, and then later Owens Corning, an  
19       aggressive defendant to lead the charge, while itself keeping  
20       its head down.

21              And Mr. Hanly will explain that that intelligence,  
22       well thought through and effective claims management strategy  
23       is consistent with the way Garlock managed its problem until,  
24       because of the exhaustion of the other defendants, it was  
25       deprived of that opportunity and was itself now brought to the

1 center of the stage.

2           There is, of course, no going back to yesteryear.  
3 The debtors have sometimes explained their proposal as aiming  
4 to get them back to the values of the 1990s. They themselves  
5 have painted a picture of the 1990s as vastly different in  
6 circumstance given the prevalence in the non-malignant claims  
7 to anything that exists out there in the world now. And yet,  
8 that's the environment they say you should replace -- put them  
9 back into by the magic of estimation.

10           But it happens naturally that when the prominent  
11 defendants, those who by accident of history or otherwise are  
12 at the center of the fight in a given stage. The plaintiffs  
13 focus their discovery efforts, their case building efforts,  
14 all of the investment in litigation that that takes on those  
15 select few; and then when they're gone, their mission of  
16 obtaining full compensation for their clients requires them to  
17 shift focus and to develop their cases against other  
18 defendants who, while their products may have contributed to  
19 the disease all along, were ones that it had never before been  
20 necessary to pursue in earnest. And now that necessity has  
21 arisen. And so they build their cases and they make break  
22 throughs the same way after years of trying and losing cases  
23 against Manville, they broke through against Manville.

24           One of the ways that they broke through is they  
25 developed means of demonstrating and persuading juries that

1 indeed it is a dangerous thing to scrape off a degraded gasket  
2 and a dangerous thing to cut gaskets.

3 I'd like to show a couple of pictures which were a  
4 revelation to me of what such a degraded gasket looks like.

5 That's asbestos fiber that you see there. It may be  
6 that the fibers when they get airborne are microscopic and  
7 contained in other dust that may be visible, but that's  
8 asbestos.

9 Let's see the next one.

10 And the next one.

11 Now -- thank you. How about the science debates?  
12 They're just that: They're debates. Garlock never settled a  
13 case without knowing its science defenses. No plaintiff's  
14 lawyer in his right mind ever settled a case with Garlock  
15 without knowing and appreciating the issues he would have to  
16 litigate to conclusion if he were to try the case. It is  
17 indeed baked into the settlement numbers. And Mr. Guy is  
18 right, that if they didn't have those defenses, they would be  
19 paying a lot higher dollars. Those are in the price already.

20 I should say that given that that is so, it's a  
21 mystery to us why the debtor has seen fit to pay no less than  
22 \$4 million to its science experts in this very proceeding to  
23 come and give the same opinions that they have given time and  
24 again in the tort system over the years. It's indeed a  
25 mystery because the issue is no different now than it was when

1 they tried their last case before bankruptcy or the case two  
2 years before that and on and on.

3 These much litigated defenses cannot sensibly affect  
4 the aggregate estimate given that they are already accounted  
5 for in Garlock's actual resolution.

6 Dr. Bates told me in deposition that he doesn't  
7 place reliance on the low dose scientists. That he does -- he  
8 does work with the occupational exposures analysis that they  
9 showed you on the screen, but he doesn't get into whether or  
10 not chrysotile hurts you or low dose emissions can cause  
11 disease. He posits that in his notional trials, Garlock will  
12 put on its science defenses. The plaintiff will respond and  
13 the juries will decide. Indeed.

14 So it comes down to their suggestion that there's  
15 pervasive dissembling in the tort system. They haven't told  
16 you that they're not permitted to show those videos of people  
17 banging on insulation to the juries or that it matters from  
18 the standpoint of laying off responsibility in comparison to  
19 the gaskets what manufacturer happens to have made the  
20 insulation.

21 They haven't even suggested in today's argument, at  
22 least, that the plaintiffs themselves know who made that  
23 insulation or that it would matter whether they knew. Their  
24 lawyer experts will tell you that and we will have it out with  
25 them on those subjects on cross examination and through our

1 own witnesses.

2 But the fact of the matter is that Dr. Bates  
3 acknowledges, and here I'd like to show a slide, slide 7.  
4 "Clearly the asbestos exposure of typical Garlock plaintiffs  
5 will come from many producers of asbestos products.  
6 Plaintiffs, however, rarely know all of the hundreds of  
7 asbestos products with which they came into contact, much less  
8 the names of all the companies that manufactured or installed  
9 these products."

10 I think that's on pages 109 -- 189 and 190 of Dr.  
11 Bates' deposition.

12 The plaintiffs don't know. The insulation products  
13 don't come with their name on the insulation. When it's being  
14 torn out, you can't tell one from the other, by and large, or  
15 at least not everybody can. And it was 50 years ago.  
16 Remember the latency period, the period of insidious cellular  
17 development of the cancer that mesothelioma typically takes,  
18 20, 30, 40 years, even longer.

19 So the plaintiffs cannot be taxed with dissembling  
20 for the natural fact that they can't name all of the  
21 manufacturers who put in all of those many asbestos products  
22 in the large industrial settings where they did their jobs.  
23 That's not typically how it's proven. It is instead proven  
24 through documents, through shipping records, through ship  
25 building records in the navy cases which figure prominently in

1 Garlock's experience; and importantly, in the libraries full  
2 of testimony taken in the past from workers who worked in the  
3 same sites that produced these claims in large numbers,  
4 testifying to what products were there, the conditions under  
5 which they were used, the conditions under which the dust was  
6 created, the trades and workmen who were exposed to the dust  
7 in their normal operations. All of that has been documented  
8 to a -- fairly well over the course of 30 years or more.

9 For example, those cases in New York City that they  
10 tried in phase one in 1993 most likely had to do with the  
11 Brooklyn Naval Yard where they made ships and periodically did  
12 tear out and refurbishing of the ships involving the removal  
13 of insulation and the removal and replacement of gaskets.  
14 Every deposition ever taken in the Brooklyn naval yard  
15 asbestos litigation is available to all comers and is admitted  
16 in all cases that go to trial.

17 So Garlock can go to that repository. Can find the  
18 co-workers who identify the Pittsburgh Corning unit asbestos  
19 product in a given part of the Brooklyn Naval Yard or the  
20 Owens Corning/Kaylo in another part of it and talk about which  
21 trades were exposed as they did their work at the naval  
22 shipyard. And Garlock, in fact, did that. Garlock had no  
23 unfair disadvantage in the ferreting out, if it mattered, of  
24 what other products a given plaintiff was exposed to. They  
25 were on a level field with the plaintiff's lawyer.

1           And there isn't a thing in the world wrong with the  
2 plaintiff's lawyer who has to get a dying mesothelioma victim  
3 to trial in his lifetime on an exigent docket from focusing  
4 first on those defendants who can pay. There is not written  
5 anywhere, except in Ohio by defendant lobbying this year or  
6 last, where it is the law that you must make your trust claims  
7 before you can proceed against the solvent defendants. That  
8 is not the general law. It is not in the plaintiff's interest  
9 to do that.

10           The defendants have their own means of developing  
11 the exposure if they want to invest their resources in that  
12 way. And they have no just complaint that now the plaintiff  
13 has to focus on the solvent defendants who can pay. The  
14 plaintiff's lawyer is not shaking his efforts to serve  
15 Garlock's interest in ferreting out other exposures. Of  
16 course they should disclose what they find and intend to use  
17 in lawsuits. No one would contend otherwise. But that's not  
18 the same as saying that Garlock is entitled to conscript the  
19 plaintiff's lawyers to develop evidence not necessary for the  
20 plaintiff's affirmative case to -- to serve the purposes of  
21 Garlock's defense.

22           And by the way, the onset of trusts hasn't made it  
23 harder for Garlock. It has made it easier. You don't get  
24 settlement information from solvent defendants. Georgia  
25 Pacific won't tell Garlock what it paid to settle a given

1 case. But the trusts publish their scheduled values and their  
2 payment percentages.

3 So when you're a Garlock lawyer and you sit down to  
4 negotiate a settlement with Perry Weitz or Peter Kraus or any  
5 of these other lawyers and you know the site where the  
6 plaintiff worked and you know through your own research the  
7 kinds of products that were historically there, you can draw  
8 sensible inferences from the published trust data as to what  
9 that claimant -- whether that claimant is going to have a  
10 claim against the Owens Corning trust. If so, whether it's  
11 likely to be allowed and paid; and if it's paid, how much.  
12 And you can factor that in to your own picture of where  
13 Garlock fits in appropriately to the settlement of the claim.  
14 They were at no disadvantage.

15 The only disadvantage they suffered was that now  
16 rather than flying under the wing of Manville or Owens  
17 Corning, they had to put on their own defense. And their  
18 defense is costly because they rely upon scientists with high  
19 billing rates. That's their choice. There could be other  
20 ways to make their case, but that's their choice. It's not  
21 something that they can justly appeal to you to solve for  
22 them. The bankruptcy court does not sit to rearrange the  
23 economic factors working on litigants outside of the  
24 bankruptcy court.

25 So we'll have a lot to say about the 15 cases that



1 they purport to base their attack on the usual way of  
2 estimating on. But fundamentally their problem is this.

3 Let's see the last slide, please.

4 In the decade of the 2000s, Garlock paid 8,567  
5 mesothelioma claims. That's not counting the 3,500 or so that  
6 they dismissed without payment.

7 They have produced in this case pursuant to order  
8 and stipulation RFA list 1 consisting of the listing of claims  
9 they say were distorted by misrepresentations and concealments  
10 in the tort system; although, they do not reserve the right  
11 and will not offer evidence of that kind of conduct in all but  
12 26 of those cases. Those 26 are RFA list 1.

13 And then finally, they have what they call their  
14 designated claims of which they -- there are 18: Three of  
15 which were Garlock victories and the remaining 15 of which  
16 were the ones they deposed the plaintiff's lawyers about.

17 Now, the RFA list 1 about which we're not going to  
18 hear evidence of claims of specific misconduct or discovery  
19 abuse, that broader list represents only 2-1/2 percent of the  
20 paid claims from the decade of the 2000s.

21 RFA list 1 -- 1A rather, the ones where they do  
22 reserve the right to offer that kind of evidence, where they  
23 did take those depositions and other discovery, is just 3/10  
24 of a percent of the overall paid claims. Just 12 -- a little  
25 less than 12-1/2 percent of the broader group of 210 even.

1           And finally, the designated claims, even giving  
2       them -- counting the three that they won, are less than  
3       3 percent. Just .2 percent of the paid claims and less than  
4       9 percent of the RFA list 1 claims.

5           It's a wildly misleading analysis. It invites you  
6       to subject -- to submit to prejudice and to generalize from  
7       their view of revisiting 15 cases and flashbacking how the  
8       discovery was handled in those cases in the absence of those  
9       litigants, to generalize to some grand conclusion about taint  
10      in the overall resolution history in the decade of the 2000s.

11          It's a wild leap and it depends upon some  
12      assumptions that we will controvert through evidence. Those  
13      assumptions are that when you list a client in the  
14      off-the-record, off-the-docket exhibit that accompanies the  
15      2019 statement in an asbestos case, you are saying that  
16      claimant has present possession of evidence sufficient to go  
17      to the jury in the tort system against that debtor's product.  
18      They don't mean that. They couldn't possibly mean that at the  
19      very beginning of the case where the question is just rounding  
20      up the people who are taking an interest in the particular  
21      bankruptcy case through their tort lawyers.

22          Likewise, ballots. They say a ballot is a sworn  
23      statement under penalty of perjury that your client was  
24      exposed to that debtor's product to the extent that they can  
25      attribute causation to that debtor's product as though they

1 were in front of the jury there and then. It's not what the  
2 ballots mean. By and large, they say on their face that  
3 that's not what they mean. And when you consider the ballots  
4 in the context of their function in the ongoing reorganization  
5 case, you can't possibly credit them as having the meaning  
6 that Garlock tells Dr. Bates to assume, and which he duly does  
7 assume. They are not the equivalent of a case presented to a  
8 jury.

9           Indeed, even trust claims themselves don't rise to  
10 that level. You've heard about site lists whereas settled  
11 defendants, the trust accepts claims based not on tort system  
12 evidence that would get to the jury on causation, but on  
13 certain cost effective presumptions that are aimed at  
14 preserving the limited funds that are the trust for the  
15 benefit of the present and future claimants who will receive  
16 pennies on the dollar after all for their claims. And those  
17 presumptions have to do with lists of sites where based upon  
18 the trust predecessor's records, the presence of the injurious  
19 products was established to a fair-thee-well.

20           And so as the settling defendant has the prerogative  
21 to do, they accept claims from persons who worked there in  
22 specified trades, also approved by the trust at specified  
23 periods of time, giving them the benefit of that presumption,  
24 not forcing on them the costs of proving what the trust  
25 already knows.

1           Now, as a litigating defendant, Garlock was not  
2           obliged to give plaintiff's the same break. And of course, it  
3           didn't when it wanted to litigate in earnest. But that  
4           doesn't mean it isn't at all injured by the trusts approaching  
5           settlement in that way any more than Georgia-Pacific was  
6           injured when Garlock chose to settle a claim based upon some  
7           evidence that the plaintiff had contact with its product and  
8           had satisfactory medicals, whether or not that proof would  
9           rise to the level of recreating a jury issue if it would be  
10          tried.

11           Garlock's entire strategy for impeaching its own  
12          hard bargain settlement history is to pluck out of context  
13          these documents that do not mean what they say, to  
14          misinterpret the documents, and to mount a massive gotcha on  
15          the 210 claims where they paid dollars that they now regret.  
16          It's not a legitimate strategy.

17           Jim Patton, a very experienced legal representative  
18          of future claims and bankruptcy lawyer will come to testify to  
19          place that kind of document in its proper context.

20           And a game of gotcha is one thing, Judge, but  
21          history is not so easy to escape. There is in life just as  
22          there is in this estimation no returning to a past decade so  
23          let's go forward and see what the evidence shows.

24           THE COURT: Thank you.

25           MR. SWETT: Thank you, Judge.

1 THE COURT: Why don't we go ahead and take a break  
2 and then come back and start with your first witness. All  
3 right.

4 MR. CASSADA: Thank you.

5 THE COURT: Take until 5 minutes till.

6 (Brief recess at 2:42 p.m.)

7 THE COURT: All right. We'll proceed.

8 MR. HARRIS: Your Honor, the debtors calls Charles  
9 Wasson.

10 THE COURT: Okay. While he's coming up -- let me --  
11 I forgot to mention earlier the CSOs, court security officers,  
12 told me that they will permit the lawyers to come through with  
13 their cell phones and laptops. But if one of your expert  
14 witnesses is going to come in with a cell phone and laptop,  
15 please ask them to identify themselves to the court security  
16 officers there and they'll let them come through once they  
17 identify themselves as an expert in this case. Go ahead.

18 CHARLES DAVID WASSON,  
19 being first duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HARRIS:

22 Q. Please tell us your name.

23 A. Charles David Wasson.

24 Q. Where are you from?

25 A. I'm from Valley Center, California.

1 Q. What do you do for work?

2 A. Currently I am an independent naval expert, consultant,  
3 and I have been engaged by various law firms from time to time  
4 concerning asbestos litigation.

5 Q. This case involves asbestos gaskets and packing. Do you  
6 know about those?

7 A. Yes, I do.

8 Q. How do you know about asbestos gaskets and packing?

9 A. I spent 30 years in the navy.

10 Q. Will you be able to tell us how asbestos gaskets and  
11 packing were used in the real world?

12 A. Yes. Yes, I will.

13 Q. All right. Have you also prepared some slides for us to  
14 help illustrate your testimony?

15 A. I have.

16 Q. I'm projecting a slide here. Can you tell us where this  
17 is from.

18 A. Yes. This is a photograph that I took aboard the museum  
19 ship, the Turner Joy, that's at Puget Sound -- or in  
20 Bremerton, Washington. And the purpose is to demonstrate the  
21 density of piping that's in these engineering spaces.

22 This is the fire room, the upper level of the after one.  
23 And you can see in the overhead the numerous pipes. Those are  
24 insulated with asbestos-containing lagging on the outside,  
25 asbestos-containing insulation on the inside, and then there's

1     asbestos-containing cements that are used on the curves and  
2     corners. And there's a valve in the upper right-hand corner,  
3     you can see the valve coil hanging down. It's painted blue.  
4     That's actually asbestos-containing cement over the outside of  
5     it.

6             MR. FINCH: Your Honor, I would just object to the  
7     extent he hasn't been proffered as an expert yet. I'm  
8     probably not going to have any objection as to qualifications;  
9     but since he's getting into substantive testimony, I would  
10    appreciate just a proffer as to what Captain Wasson is an  
11    expert in.

12            THE COURT: All right. Do you want to take him  
13    through that.

14            MR. HARRIS: Sure.

15            THE COURT: Okay.

16    BY MR. HARRIS:

17    Q. We'll talk a little bit about your background and then  
18    we'll come back to these materials.

19            Captain Wasson, will you please tell us about your  
20    educational background.

21    A. Yes. I attended the University of Colorado and got a  
22    degree in petroleum geology.

23    Q. And when did you graduate?

24    A. In 1960.

25    Q. What did you do after that?

1 A. Well, the citizens of the United States decided that I  
2 probably should be in the armed services. I got a draft  
3 notice, and I turned out to be qualified. And to avoid the  
4 army, I joined the navy and went through the officers  
5 candidate program.

6 Q. Where were you first assigned?

7 A. First I went to Newport News -- Newport, Rhode Island,  
8 and went through the officers candidate school there.

9 Q. And after that --

10 THE COURT: You're smarter than I was. I joined the  
11 marines.

12 THE WITNESS: I had a hot shower most every night.  
13 Long as I could make the evaporators run.

14 Anyway, after a short time at the fire fighting  
15 school in Philadelphia, I reported aboard the aircraft carrier  
16 Oriskany for my first tour of duty.

17 Q. All right. We have that displayed here. That was from  
18 1961 to 1963. Can you tell us what that type of work was that  
19 you were doing, what your responsibilities were.

20 A. Well, first six months we were in overhaul and I was  
21 overhaul coordinator. But when that finished on the Oriskany,  
22 I became a boilers officer.

23 Q. What does that mean for a ship to be in overhaul?

24 A. Well, that's where most of the machinery that doesn't  
25 work well gets repaired or you hope you get all of it



1 repaired. The valves are repaired. New piping is put in.  
2 New insulation obviously is installed, new gaskets and packing  
3 where it's needed. The shipyard is doing their work; but at  
4 the same time, the crew has their list of things they have to  
5 perform too. So the shipyard and crew are working together.

6 Q. So the crew's on board while the shipyard is doing their  
7 work?

8 A. Absolutely.

9 Q. What's the first phase of the overhaul process?

10 A. Well, the first phase, they call it a rip out which is --  
11 sounds like we're tearing the ship all apart. To a great  
12 extent you are. But the first thing is you remove all the  
13 insulation that's going to be -- machinery is going to be  
14 repaired or fixed, you get that out of there. But at the same  
15 time the machinery that is going to be repaired, it's being  
16 removed at the same time. The crew is down there and  
17 everything is coming out. So they call it rip out. That's a  
18 big name. That's the first thing that occurs.

19 Q. All right. And during that rip out phase, who's on  
20 board? Shipyard personnel?

21 A. A lot of shipyard personnel and the crew.

22 Q. All right. Have you been on board ships during the rip  
23 out phase of overhaul?

24 A. Yes, sir. The Oriskany.

25 Q. The Oriskany was one. Did you see asbestos gasket and

1     packing work going on aboard the Oriskany when it was in  
2     overhaul?

3     A.     During the overhaul time, yes.     That was one of the  
4     operations that occurred that I witnessed.

5     Q.     All right.     And so this was in 1961.     You said you became  
6     a boiler officer?

7     A.     Yes.

8     Q.     What is that?

9     A.     Well, I was the guy that got in charge -- placed in  
10    charge of the ship's eight boilers.     We had four fire rooms,  
11    250 men.     I also had the evaporators to make the water for the  
12    ship, and then kept track of the water inventory.     That's both  
13    feed water for the boilers and potable water for domestic  
14    uses.     And then we had a couple million gallons of fuel on  
15    too.

16    Q.     And what kind of ship was the Oriskany?

17    A.     It was an aircraft carrier.

18    Q.     All right.     So you were there for two years.     Tell us  
19    about your next assignment.

20    A.     My next assignment was on the Coontz, it was a guided  
21    missile destroyer.

22    Q.     And what was your role?

23    A.     I was a damage control officer for the ship.

24    Q.     Would a damage control officer have anything to do with  
25    gaskets and packing?

1 A. Yes, it did. One of my duties in addition to looking out  
2 for the damage and fire on the ship during general quarters  
3 time, I had the auxiliaries division, the R division, and the  
4 electrical division. The R division, R stands for repair, and  
5 these guys are the guys that went around and repaired the  
6 pipes throughout the ship when they leaked. One would think a  
7 new ship, they don't leak, but salt water has a way of doing a  
8 job on the piping system so oftentimes the R division guys  
9 were out fixing valves that were leaking, taking valves out  
10 that had to be repaired or removing sections of piping that  
11 had to be replaced.

12 These were covered with insulation material and since  
13 Coontz was a 1960 built ship, it was asbestos-containing  
14 materials. And packing and gaskets were involved in that,  
15 too.

16 Q. On the Oriskany, when was that ship built?

17 A. Oriskany was built in 1950.

18 Q. And did it have asbestos-containing insulation materials  
19 on it?

20 A. Yes, it did.

21 Q. Back to the Coontz. Did you -- were you -- have you ever  
22 changed gaskets and packing in the course of your work?

23 A. Well, when I was a boilers officer on the Oriskany, I, in  
24 fact, did hands-on work with my men to learn. I was a very  
25 junior officer at the time. Yes, I repacked the valve.

1     Helped repack a pump.  Made a compressed asbestos sheet  
2     gasket.  Installed flexitallic or spiral-wound metal gaskets.  
3     So I made myself a semi expert so I would know how do what my  
4     men were doing.

5     Q.   And on the Coontz, did you ever come in contact with  
6     asbestos insulation yourself?

7     A.   Yes, I did.  Oftentimes we have piping leaking and I  
8     would want to find out how bad is the bad news under this.

9           And oftentimes I would use a hammer, I preferred a claw  
10    hammer is what I used.  It was much easier.  My men did not  
11    appreciate their officers doing this because it made a  
12    terrible mess.  But I wanted to know how much pipe are we  
13    going to have to replace.  And I did that on one occasion; and  
14    after a talking to by the chief behind doors, I didn't do that  
15    anymore.

16   Q.   What about your men, have you ever watched your men  
17    remove insulation to get to a valve or to get to a gasket?

18   A.   Yes, many times.

19   Q.   Your next assignment was on the USS Goldsborough as the  
20    chief engineer.  What type of ship was that?

21   A.   Goldsborough was a smaller ship.  It was a guided missile  
22    destroyer and we had four boilers and two main engines on that  
23    ship.

24   Q.   Did you ever come in contact with asbestos gaskets and  
25    packing or insulation during the course of that work?

1 A. Oftentimes. Goldsborough was a 1963 built ship and it  
2 was an asbestos built ship. And of course, during the process  
3 of operating the ship, I observed my men more than one time  
4 replacing gaskets at various times as well as doing packing  
5 work.

6 Q. Have you been -- was the Goldsborough an overhaul when  
7 you came on board?

8 A. Yes, it was, matter of fact. About halfway through.

9 Q. Then in 1970 to 1972, your position was aircraft carrier,  
10 long-range planning officer; is that correct?

11 A. Yes, sir. Got a reprieve and was ashore for a couple of  
12 years there.

13 Q. Did you have any contact with asbestos gaskets or packing  
14 in the course of that work?

15 A. During that period, no.

16 Q. All right. From 1972 to 73, there's an entry for  
17 Vietnamese naval ship overhaul advisory. Can you tell us what  
18 this referenced.

19 A. Yes. I got volunteered to go to Vietnam for a year, and  
20 my job fortunately took me out of country often. I was  
21 responsible for the turn over of various World War II ships to  
22 the Vietnamese navy. And there were ships -- we were  
23 overhauling these ships before we gave them to them. And I  
24 had some ships in Guam, in Subic Bay, Philippines, and down in  
25 the Republic of Singapore. And once a month I made the tour

1 around to these three shipyards to see how the overhaul was  
2 going, talk with the Vietnamese crew. And I observed them  
3 working with packing gaskets and even talked to them on  
4 occasion about how -- ways to pack valves or pack a pump.

5 Q. What about asbestos insulation, was asbestos insulation  
6 used on these ships that we were turning over to the  
7 vietnamese?

8 A. Yes, sir. They were all World War II guys.

9 Q. Captain Wasson, we're up to 1973 to 1976. It says  
10 SupShips, ship superintendent. Can you tell us what that  
11 represents.

12 A. Yeah. The navy has these acronyms and SupShips doesn't  
13 mean to a lot of people, but it is an abbreviation for  
14 supervisor of ship building, conversion and repair. And the  
15 navy had about 11 of these officers around the United States  
16 and their job was to issue contracts to private contractors  
17 for the repair of navy ships that were in the port.

18 My SupShips in San Diego administered to about nine  
19 master ship repair contractors that were awarded contracts if  
20 they were the low bidder to do repair works on various ships.

21 Q. It says ship superintendent. Would you have any  
22 responsibility or would the course of your work take you into  
23 contact with asbestos gaskets and packing or insulation during  
24 that time?

25 A. Yes, it did. As a ship superintendent on the waterfront

1 where the carriers were moored, I did repair periods with  
2 Kitty Hawk, another one with Constellation, and another one  
3 with Ranger. And there were other ships, but the aircraft  
4 carriers were my specialty and there were major repair periods  
5 and there were any number of contractors on board. I daily  
6 was on those carriers during each one of those availabilities  
7 of repair periods and I observed contractors working with  
8 gaskets and packing on various ship systems.

9 Q. All right. What about asbestos insulation during this  
10 time period?

11 A. Yes. Kitty Hawk and Constellation were both delivered to  
12 the navy in '61, and Ranger was a '57 ship. So they were  
13 built during the time that the navy was using  
14 asbestos-containing materials.

15 Q. All right. Was the navy in 1973 installing  
16 asbestos-containing insulation at this time?

17 A. No. They had ceased -- well, there was some particular  
18 items that replacements hadn't been identified. But in '72  
19 they commenced a phasing out of asbestos-containing  
20 insulation; and as new materials were found, they started  
21 using those. '73 there was only one or two items left that  
22 still had asbestos in it, but they disappeared by '74.

23 Q. In 1976 to 1978 you were assigned to the USS  
24 Constellation as the chief engineer; is that correct?

25 A. That is correct.

1 Q. What's the -- what type of ship was the Constellation?

2 A. It's an aircraft carrier.

3 Q. When was it built?

4 A. It was built at Brooklyn Naval Shipyard, delivered in  
5 1961.

6 Q. Would asbestos insulation have been installed on the USS  
7 Constellation?

8 A. Yes, there was.

9 Q. So your -- what was the role as the chief engineer of  
10 this aircraft carrier?

11 A. Well, I was responsible to the captain for the ship's  
12 mobility. I had -- the ship had eight boilers that I oversaw,  
13 and I had men to help me with it, four main engines. And we  
14 took care of, you know, making this big ship go. When we got  
15 underway, I always felt like another miracle performed with  
16 these 17 to 20-year-old kids running this monstrous machine.  
17 The engines on it were 240,000 shaft horsepower. It was an  
18 amazing ship. The captain could water ski behind it it went  
19 so fast.

20 Q. Did that happen?

21 A. No, no.

22 Q. As the chief engineer, it sounds like that's a fairly  
23 senior position on board the ship. Are you ever down in the  
24 machinery spaces when the crew is working?

25 A. Daily. I kind of managed by walking around to see what



1 was going on. Obviously, I had a good force of other officers  
2 to help me run this big ship, a good bunch of chief petty  
3 officers, but I was always wandering around to see what was  
4 going on. Particularly during the in-port periods when we had  
5 a lot of repair work going on just to see what was being done.

6 Q. All right. From 1979 to 1982, you're at Long Beach Naval  
7 Shipyard. Can you tell us what your responsibilities were  
8 during that period of time.

9 A. Well, my first year in the shipyard I was a program  
10 manager as well as a ship superintendent overseeing a one-year  
11 program on the new ship Belleau Wood. We had major  
12 modifications to make to the ship after it was delivered. And  
13 my job was to oversee those repairs for that year. And then  
14 monthly I got to make a trip to Washington, DC, and report to  
15 five admirals how well we were doing.

16 Q. Did any of that work bring you into contact with asbestos  
17 gaskets or packing?

18 A. Yes, it did. I mean, we were making major piping mods to  
19 this new ship and there were any number of piping systems  
20 going in and new valves that had gaskets of various types  
21 going on them as well as repacking some of the valves, too.

22 Q. Now, being the repair officer on the -- that oversaw the  
23 USS New Jersey reactivation, can you tell us what that was  
24 about.

25 A. Well, after my first year as the program manager, I moved

1 up to repair officer where I was overseeing all the work that  
2 was going on in the waterfront of the shipyard. We had five  
3 or six overhauls going on. And one of the fun jobs that came  
4 through was reactivation of the big Battleship New Jersey. It  
5 was such a wonderful big piece of machinery. It was delivered  
6 to the navy in '43 and operated through the '90s.

7 Q. When it was -- when it was going through this  
8 reactivation, was there asbestos insulation on board?

9 A. Yes, there was a large amount of it. And initially we,  
10 the navy, thought we would probably remove all of it and  
11 replace it, but it quickly became a realization it's too  
12 expensive an undertaking. So we only abated where we were  
13 working, sealed the other.

14 Q. Captain Wasson, from 1982 to 1983, it says U.S. Pacific  
15 fleet, surface ship maintenance officer. Can you tell us what  
16 that work was about.

17 A. Well, I was -- it's ashore obviously. My job was to  
18 oversee the overhauls the surface force had going on  
19 throughout the west coast of the United States. There were  
20 overhauls and repairs in the Seattle/Tacoma area, San  
21 Francisco, Long Beach, and, of course, the Port of San Diego,  
22 as well as Hawaii. I had five or six overhauls going at any  
23 one time and I would make the round to visit these ships to  
24 see how it goes.

25 Q. Would you be on board when any asbestos gasket and

1     packing work might have been going on?

2     A.    Yes.

3     Q.    Was there asbestos insulation on those ships?

4     A.    The new ships at that point in time, no.  The older ships  
5     going over -- through overhaul, yes.  But in that time  
6     framework, asbestos abatement was being followed very  
7     strictly, so you didn't get into asbestos without it being  
8     sealed off.

9     Q.    All right.

10    A.    You didn't do that.

11    Q.    So your last two assignments you were the commanding  
12    officer, first at SupShips San Diego and then SupShips Newport  
13    News; is that correct?

14    A.    Yes.

15    Q.    In the course of that work or your responsibilities,  
16    would you have been in contact with asbestos gaskets or  
17    packing?

18    A.    I saw it being performed at both facilities.  You know,  
19    as a CO in San Diego, I went around and visited the ships I  
20    had in overhaul as well as the ones that were under  
21    construction and so I would see what was going on.  So, you  
22    know, it's a natural course of things gaskets are going in on  
23    any number of piping and valve systems as well as the work the  
24    crew is doing during these overhauls.

25    Q.    During the entire course of your career, you -- you had

1 experience with asbestos, gaskets, packing, and asbestos  
2 insulation, as I understand; is that correct?

3 A. That is correct. They were used on piping systems that  
4 are the life blood of any ship.

5 Q. In that -- in that context, in your personal work, how  
6 would you know which gaskets go where, which packing goes  
7 where, where the asbestos insulation might go as opposed to  
8 other insulation?

9 A. Well, there's documentation out there that explains, you  
10 know, Bureau of Ships Technical Manual explains what type of  
11 insulation to be used where and on what system. And there's  
12 also mil standards that tell you what type of gaskets should  
13 be used on what systems, too. So there's a lot of  
14 documentation to tell you what you should be putting where, or  
15 what you're required to put where.

16 Q. You mentioned BuShips Technical Manual. Can you tell us  
17 what that is.

18 A. Well, the Bureau of Ships of the navy had a big set -- it  
19 was about three volumes wide and it had about a hundred  
20 chapters in it. And each chapter, a sailor could go to it,  
21 tell him how to paint a ship, how to work on a turbine, how to  
22 work on a pump, how to work on a boiler, how to put insulation  
23 in, how to put packing in. And each ship had a set of these  
24 on board.

25 Q. And those are materials that you would have viewed

1 personally and used?

2 A. Yes.

3 Q. Were those instructions that were in the BuShips  
4 Technical Manual, were they followed?

5 A. Yes, they were.

6 Q. Were there other sources of information that told you  
7 which types of gaskets go where, which types of packing go  
8 where and which types of insulation go where?

9 A. Well, ship's drawings would tell you what type of  
10 insulation goes where.

11 Q. Would the ship's drawings be something that you  
12 personally would have used during the course of your career to  
13 understand where to use asbestos gaskets and packing?

14 A. Many times I had the ship's drawings out for any number  
15 of things.

16 Q. And so the ship's drawings would be specific to the ships  
17 that you were on. The BuShips Technical Manual would be --  
18 would that be specific to your ship or would that be for ships  
19 generally?

20 A. It's ships in general. But that which appeared on the  
21 drawing parallels what's in BuShips Technical Manual.

22 Q. All right. We've heard about military specifications and  
23 QPLs. Can you tell us what those are.

24 A. Well, for the various products that the navy used and the  
25 government had, they wrote up a specification of what that

1 material should consist of. You know, what's the materials  
2 you put into it, how thick it would be, how do you package it  
3 for shipping, and all these details. That's the  
4 specification, you know. And I jokingly say it tells you how  
5 to make a camel out of a horse. They have a spec for almost  
6 everything that's bought.

7 Q. All right. What are QPLs?

8 A. That's the qualified products list, and various companies  
9 who wanted to make a particular product for the government  
10 would make application to get their product that complies they  
11 felt with a particular military specification so they could be  
12 certified and then placed on the qualified products list so  
13 that they would be one of the eligible candidates to provide  
14 materials to the government.

15 Q. In the course of your work, did you use military  
16 specifications?

17 A. Yes, I did.

18 Q. Would you refer to QPLs?

19 A. Not really. I really wasn't in the procurement business.  
20 I knew they were out there. And oftentimes I wanted to go to  
21 some particular company to get something and they said,  
22 huh-uh, you've got to go to the QPL. But I didn't really use  
23 them.

24 MR. HARRIS: Your Honor, we tender Captain Wasson as  
25 an expert witness on how asbestos gaskets, packing, and

1 insulation, and other asbestos products were used on board  
2 ships currently and historically.

3 THE COURT: Okay.

4 MR. FINCH: Brief voir dire, Your Honor? Nathan  
5 Finch Asbestos Claimants Committee.

6 THE COURT: Yeah, go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. FINCH:

9 Q. Good afternoon, Captain Wasson. My name is Nate Finch.

10 A. Good afternoon, Mr. Simpson.

11 Q. Mr. Finch.

12 A. Finch.

13 Q. Like a bird, F-i-n-c-h.

14 A. Okay, got it.

15 Q. Captain Wasson, you're not an industrial hygienist,  
16 correct?

17 A. No, I'm not.

18 Q. You don't have a degree in engineering, correct?

19 A. What kind?

20 Q. You don't have a degree in engineering.

21 A. No, mine's in geology.

22 Q. In geology. You don't have expertise in using either  
23 electron microscopes or light microscopes to analyze what type  
24 of asbestos fibers are in products or dust, correct?

25 A. Correct.

1 Q. It's never been your job to figure out how to comply with  
2 OSHA limits or regulations for removing gaskets, correct?

3 A. Correct.

4 Q. You don't know what the level of asbestos fiber  
5 concentration would have to be before it's visible to human  
6 eyes, correct?

7 A. Correct.

8 Q. And you don't know if someone -- if insulation releases  
9 dust, you don't know how much of that that you see is  
10 asbestos, correct?

11 A. Yes. I mean, you're correct.

12 Q. And likewise, if somebody is scraping a gasket off a  
13 flange, you don't know how much of the stuff in the air could  
14 be asbestos, correct?

15 A. No, I would not.

16 Q. And so you don't -- and you certainly don't know what, if  
17 any, health consequences would arise from scraping a gasket  
18 off of a flange. That's not part of your area of expertise,  
19 correct?

20 A. No, sir.

21 MR. FINCH: Okay. With that voir dire, Your Honor,  
22 I have no objection to the areas that Captain Wasson has been  
23 designated as an expert as long as his testimony is limited to  
24 that.

25 THE COURT: All right. Then I'll accept him as an



1 expert.

2 DIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q. So Captain Wasson, we're going to scroll back real  
5 quickly to some -- oops, wrong way -- to some slides here that  
6 we skipped over.

7 We were back here at the -- I believe -- did you say this  
8 was the engine room on the Turner Joy?

9 A. It's the upper level of the after fire room.

10 Q. All right. And what type of ship was the Turner Joy?

11 A. It was a destroyer, what they call a 1200-pound  
12 destroyer.

13 Q. When was it built?

14 A. It was built in '59.

15 Q. Okay. And now it's a museum ship in Bremerton; is that  
16 correct.

17 A. That is correct.

18 Q. All right. So I was going to ask you if you could  
19 identify for us the asbestos products that we might see here  
20 in the engine room.

21 A. Yes, I can.

22 Q. All right. Please do. Please tell us what we see.

23 A. Well, first of all, the person pulling this out just to  
24 demonstrate the density of the piping systems that shipyard  
25 workers have to face in these destroyers. They're very tight

1 spaces. In the overhead running there away from us and down  
2 towards the deaerating feed tank, which no one knows what it  
3 is, but that's the tank on the far side. There's three big  
4 pipes there. Insulated on the outside of it is  
5 asbestos-containing cloth. Underneath that would be  
6 asbestos-containing pipe insulation. It's preformed. And  
7 then as I said earlier, the curves and such are filled in with  
8 cements which has an asbestos content. And that cement, a  
9 good example of it is over on the valve on the right-hand side  
10 that's hanging down, at that cement that's been formed around  
11 that valve.

12 Q. All right. Would there be gaskets and packing on these  
13 pipes?

14 A. Yes, there would be. There's not any immediately looking  
15 flanges in there, but other places there are.

16 Q. All right. This was another picture. Can you tell us  
17 where you took this picture.

18 A. Yes. That's a picture I had taken aboard the Museum Ship  
19 Massachusetts. It happens to be in the pipe shop.

20 Q. All right. And what type of ship was the Massachusetts?

21 A. It was a battleship.

22 Q. Built in what era?

23 A. 1940.

24 Q. And these were just down in the -- where did you say?

25 The pipe shop or the --

1 A. It was in the pipe shop. They had -- I actually took the  
2 picture through Plexiglas so that's the way they had -- the  
3 pipefitters had left them or the curators of the museum had  
4 arranged them. But it's an example of compressed asbestos  
5 sheet gaskets that are used on stationary fittings.

6 Q. It looks like the top one is labeled Nicolet (phonetic),  
7 but the next one down is Scarlock (phonetic); is that correct?

8 A. Yes. And there's other companies down through the pile  
9 there, too.

10 Q. All right. We've talked about asbestos packing. Is this  
11 a picture of asbestos packing?

12 A. Yes, that's an example of what asbestos packing looks  
13 like. This is a little tin. It's coiled up. You can see how  
14 shiny it is. That's the graphite particles on the outside as  
15 well as it's been sprinkled with talcum so it doesn't stick  
16 together. And the darker glossy stuff is a rubber material  
17 that's in the packing to hold it together.

18 Q. Captain Wasson, I wanted to -- we've got some asbestos  
19 packing that Garlock made in a plastic bag here.

20 MR. HARRIS: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 THE WITNESS: Yes. That's packing.

23 Would Your Honor like to look at what one of them  
24 looks like?

25 Q. Does that appear to be asbestos?

1 A. It is asbestos, but it's sealed up in a bag. And you can  
2 see the little sparkles of graphite on it.

3 Q. And so this -- and so this packing has a lubricant or  
4 graphite on the outside of it?

5 A. Yes, it does.

6 Q. And that's what this appears to be inside this can?

7 A. Yes, that's what you're seeing in the photograph there.

8 Q. All right. About what size would this can be? We've got  
9 it blown up on the big screen there.

10 A. Well, it's about two inches in diameter and the packing  
11 inside is probably about 3/8 wide. It's not particularly  
12 large.

13 Q. Okay. Captain Wasson, this looks like another picture of  
14 a valve. Can you explain this picture to us, where you took  
15 it.

16 A. Yes.

17 And Your Honor, could I approach the screen --

18 THE COURT: Sure.

19 A. -- to do some pointing? It's a little hard to make  
20 certain that everybody knows what I'm talking about or  
21 pointing at.

22 (Witness stepped down from the witness stand.)

23 Q. Captain Wasson, let's just put this microphone on your  
24 lapel.

25 A. Oh, okay. That way I'll be amplified appropriately.

1 Q. There you go.

2 A. Let's make certain I don't block the picture or anybody  
3 else's view.

4 Q. Okay.

5 A. This was taken aboard the Museum Ship Lexington. It's  
6 down in the forward auxillary machinery room. There's a shell  
7 in the background. And the valve, see it right here. Big  
8 valve. Unfortunately the valve wheel is missing on it. But  
9 there's a flange underneath the insulation here. There's a  
10 flange up at the top. And this being a gate valve, there's a  
11 flange on the bonnet of it. And you can just barely see the  
12 packing gland which is a yellow material. It's taken on a  
13 nice green corrosion color for the packing gland.

14 Q. Captain Wasson, I've got -- I've got an example of a  
15 valve. If you want to step over here, I'll hold it.

16 MR. HARRIS: Your Honor, may we approach the bench  
17 to show you?

18 THE COURT: Yes.

19 Q. Captain Wasson, can you tell us what this is.

20 A. Well, it's a gate valve. If someone -- it's been cut, a  
21 quarter of it has been removed on it.

22 I'll turn it this way, Your Honor, so you can see it as  
23 well on it. It's been cut open.

24 Let's start over here on the outside. There's a gasket  
25 to seal one of the flanges. This particular flange has pipe

1 threads on it so it tells me it's a low pressure guy.

2 On the other side we can see the -- where another gasket  
3 would go. And there would be a gasket there. Has a  
4 phonographic finish to help seal it.

5 You can see the gate down inside. Not everybody in the  
6 audience can see the gate in it, but it's a gate. It's a  
7 rising stem valve. Threads here so the stem comes up when you  
8 open it.

9 Up here at the top, up at the top of it here you can see  
10 the packing. Of course, it's a small valve so the packing is  
11 not very big in it.

12 There's a packing gland which shoves down against it.  
13 And then as you tighten up the nut on it, it's kind of like  
14 your water faucet outside, just tighten the nut down and the  
15 packing squeezes out against the shaft and you get zero  
16 leakage there on that type of packing gland.

17 Q. So if this was on a pipeline of some type, there would be  
18 pipe that would come out here and then pipe that would come  
19 out here (indicating)?

20 A. Yes. An inlet and outlet on it.

21 Q. All right. And this is a small gate valve; is that  
22 right?

23 A. Yes, it is.

24 Q. Okay. And Captain Wasson, does that appear to be a gate  
25 valve?

1 A. Yes, that's a gate valve. That's a little one. This is  
2 going to be much larger. It's probably as much as 10 inches  
3 in diameter, that gate valve in there.

4 Q. Now, you mentioned earlier flexitallic or spiral-wound  
5 gaskets. How are those different than asbestos sheet gaskets?

6 A. Well, asbestos sheet gaskets are used on low temperature  
7 and low pressure because a gasket can't withstand much  
8 temperature or a great deal of pressure; whereas, the metallic  
9 spiral-wound ones are intended for the higher pressures and  
10 higher temperatures. They'll withstand it. This being a salt  
11 water system, underneath this insulation material would be, in  
12 fact, a compressed asbestos sheet gasket on both the flanges  
13 and the bonnet.

14 Q. Historically, would a valve like that in that service be  
15 insulated with asbestos insulation?

16 A. Given the age of this ship, yes, it would be.

17 Q. How would -- if a sailor or shipyard worker was going to  
18 access the flanges in order to remove the gasket or replace  
19 the gasket, how would they go about doing it?

20 A. The insulation on this, it's actually insulation cement,  
21 and then it's got -- actually the insulation cement is mixed  
22 with a little bit of Portland Cement to get a nice, smooth  
23 exterior of it. It gives it a very hard shell, like the back  
24 of a turtle. A razor knife won't cut that stuff. It just  
25 skids off of it, so you got to hammer it to break through it.

1 You know, there's various things, sailors used crow bars,  
2 paint scrapers, and ball-peen hammers, is what I would most  
3 often see. But that would have to be broken to gain access to  
4 those flanges to repair a leak or repair the valve.

5 Q. We showed the court this morning in opening -- during  
6 opening statements a portion of a video from a project that  
7 expert witness Fred Boelter had prepared for this proceeding.  
8 And I've got another excerpt of this video here. Can you tell  
9 us what's going on here?

10 A. Well, he's demonstrating the problem with gaining access  
11 to a flange that's been completely insulated under. To gain  
12 access to the flange, that's what has to be done.

13 In this case, fortunately the bottom wasn't insulated  
14 under so he doesn't have to knock that off. But if you want  
15 to work on it, you got to remove it and the cement is very  
16 hard.

17 Q. Is that similar to conditions you saw aboard ships when  
18 sailors or shipyard workers were removing insulation in order  
19 to access gaskets?

20 A. At Hunters Point I saw shipyard workers do that. On the  
21 Coontz particularly, as an R division officer, I did similar  
22 things myself, as well as my R division men did on piping they  
23 had to repair.

24 Q. Captain Wasson, I now want to scroll through to another  
25 slide.



1           There we go.

2       A.   We're getting me qualified here.

3       Q.   Go back to the part of the exam where I had asked you,  
4       there's -- there's asbestos compressed sheet gaskets,  
5       spiral-wound gaskets. Are there other types of gaskets that  
6       are used in the navy?

7       A.   Yes, there are.

8       Q.   What were the other types?

9       A.   Well, there are nonasbestos-containing. Rubber is used  
10      in any number of places. There's cork that's used, like in  
11      your wine bottle, and there's also various vegetable types.

12      Q.   Okay. And then how do you know which gaskets go where?

13      A.   Well the primary place on board ship is the BuShips  
14      Technical Manual, Chapter 95, and it sets forth what type of  
15      gasket materials should be used on what pressured system and  
16      what temperatures.

17      Q.   All right. This next photograph, can you tell us, is  
18      that a compressed sheet gasket?

19      A.   No, sir. That's a spiral wound.

20      Q.   And --

21      A.   That's a picture I had taken on board the Battleship  
22      Massachusetts of a spiral wound. These are -- they're  
23      stainless steel spirals and they're kind of bent in a U and  
24      there's little fine sheets of papers between the bends or  
25      wraps of it. It's spot welded on the outside so it won't come

1 loose and it's also spot welded on the inside.

2 And, Your Honor, I just happen to have a couple of them  
3 in my pocket here you can take a look at, see what a metallic  
4 spiral-wound gasket really looks like. These are  
5 nonasbestos-containing.

6 Q. Captain Wasson, is this another spiral-wound gasket then?

7 A. Yes, it is. That particular one is used for a boiler  
8 manhole. It's much larger. And that's a steam drum on the  
9 boiler which during shut down time they need to go in and  
10 clean the water sides on the boiler. That manhole would come  
11 out and this is the gasket that would be used on it.

12 Q. All right.

13 A. High temperature, high pressure.

14 Q. Can you tell us -- this looks like another gasket taken  
15 from the Massachusetts?

16 A. Yes, it was. It was one I found on a pipe. And I think  
17 initially I called it a ventilation system, but I think it may  
18 be auxiliary exhaust. It's an example of a compressed  
19 asbestos sheet gasket. Taking it apart, it's typical in the  
20 way they peel off in my experience. For some reason they  
21 decided to save it and put a few bolts on it to hold it on  
22 there for maybe future use.

23 Q. Mr. Swett spoke in opening about compressed sheet gaskets  
24 having up to 80 percent or more asbestos in them. Is that  
25 your understanding?

1 A. Yes, sir.

2 Q. Now, how thick is this gasket?

3 A. That particular guy is only about a sixteenth of an inch  
4 thick. It's rather thin. And you can see the black color of  
5 it is because of the rubber material in it to hold it  
6 together.

7 Q. In your experience how thick -- what is the thickness  
8 range of asbestos sheet gaskets?

9 A. Sixteenth to maybe an eighth.

10 Q. Sixteenth --

11 A. To an eighth of an inch thick. They do come in thicker  
12 varieties, but on navy ships generally eighth inch is the  
13 thickest one we used.

14 Q. So eight gaskets to an inch would stack up, right?

15 A. Yes.

16 Q. About how long are the pipe coverings that are used on  
17 pipes? The sections, the pipe covering sections?

18 A. What do you mean by how long?

19 Q. How long are they?

20 A. Oh. Well, they're preformed sections and they're put on  
21 the pipe and it will run from flange to flange. You know,  
22 they put it on there and it's held on with wire and they come  
23 back and put the cement, seal in all the little places that  
24 need to be sealed, and then the cloth goes over the outside of  
25 that. So it could be maybe 15, 20 feet long before it runs

1     into a flange.

2     Q.    And how -- how thick is this pipe covering?

3     A.    It will depend on what system it's on, and then the  
4     temperature that system used.  And then you go to BuShips  
5     Technical Manual and it will tell you how thick of what you  
6     should be putting on.

7     Q.    Typically can you give us the size range of the thickness  
8     of the pipe covering that would go on it.

9     A.    It ranged from thinnest as maybe an inch up to almost  
10    three inches thick on main steam.

11    Q.    So is there materials or specifications for the navy that  
12    tell you exactly which lines you put spiral-wound gaskets on  
13    and which lines you put compressed asbestos sheets on --

14    A.    Yes.

15    Q.    -- and other services?

16    A.    Yes, there is.  One we mentioned is Chapter 95.  And then  
17    in 1962 the navy came out with a mil standard that sets forth  
18    all those -- all those packing and gasket requirements.

19    Q.    And what's the difference between the BuShips Technical  
20    Manual and military standards?

21    A.    There's none.  You know, because they're issued at  
22    different times, there's probably different guys are doing  
23    them.  I've found various small inconsistencies, but they're  
24    basically darn near the same.

25    Q.    All right.  In the report that you prepared for this

1 case, did you discuss one of the mil standards that would  
2 address this?

3 A. Yes, I do.

4 Q. What was the mil standard that you identified?

5 A. Mil Standard 777.

6 Q. All right. And can you tell us what Mil Standard 777 is.

7 A. Yes. In 1962 the navy issued this and it's a document  
8 that tells a shipyard or repair guy when he's working on a  
9 particular system the type of pipe he should be using, the  
10 valves that he should be using, the fittings, and also  
11 associated fittings like elbows and T's and things like that,  
12 as well as also the gasket material that would be used on that  
13 particular system. And it covers all systems on all ships.

14 By having this document, they didn't have to put all that  
15 information on every drawing they made, which they had done  
16 previously and it's very burdensome to put all that  
17 information on each drawing.

18 Q. Does the Mil Standard 777 cover steam systems on board  
19 ships?

20 A. Yes, it does.

21 Q. All right. Have you looked to see what different types  
22 of steam systems are identified in Mil Standard 777?

23 A. Yes, I did. The next slide shows that there were 11  
24 steam systems identified in the 1962 edition of that mil  
25 standard.

1 Q. And that specifies, it looks like according to this  
2 chart -- now, let me ask you first. Is this chart actually in  
3 Mil Standard 777 or is this a summary that you prepared of  
4 that standard?

5 A. I pulled it from it. And those A numbers and B numbers  
6 are the different systems that I pulled from the spec to make  
7 this table that shows only the steam systems that are  
8 addressed.

9 Q. All right. And the Mil Standard 777 specifies the gasket  
10 type for each of those systems; is that correct?

11 A. Yes, it does.

12 Q. And what did it specify in that regard?

13 A. You can note here, I've indicated what type of gasket was  
14 recommended -- what's actually required by the navy, not  
15 recommended, and it's spiral wound which we were just  
16 discussing. These are the metallic spiral-wound gaskets  
17 commonly referred to as flexitallic. Kind of like all the  
18 tissues are Kleenex. Well, all spiral wounds in the navy are  
19 flexitallic and they really aren't.

20 Q. Why would spiral-wound gaskets be specified instead of  
21 compressed asbestos sheet?

22 A. Because of the temperatures and pressures involved.

23 Q. So there's 11 steam systems and only one of those called  
24 for compressed asbestos sheet; is that correct?

25 A. That is correct.

1 Q. Did you also look besides steam systems at all the other  
2 systems that are covered by Mil Standard 777?

3 A. Yes, I did. 777, the '62 edition, actually -- well, this  
4 shows only the one has the compressed sheet asbestos gasket --

5 Q. I've switched --

6 A. -- required.

7 Q. I switched slides now to a different --

8 A. Yeah. This is all the systems from the 1962 edition of  
9 777, pulled from the '62, and there's 12 systems that have  
10 compressed asbestos sheet gasket as a recommended gasket or  
11 it's an alternative shown on it.

12 Q. All right. The ones with an asterisk, what does that  
13 indicate?

14 A. The one with the asterisk means they have a substitute  
15 that you could use. In my experience, as I went through and  
16 looked at each one of those with the asterisk, most of them  
17 are the rubber -- sheet rubber is what's recommended. And if  
18 I were chief engineer, I'd go put rubber in because it's  
19 superior because they're salt water systems.

20 Q. All right. So the '62 systems, 12 specified the  
21 compressed asbestos sheet; is that correct?

22 A. Yes.

23 Q. Captain Wasson, there's another table I believe you  
24 prepared for your report with respect to compressed asbestos  
25 sheet gaskets and Mil Standard 777. Can you tell us what this

1 represents.

2 A. What I looked at was these low pressure, low temperature  
3 systems, you know, which ones of them have soft metal? In my  
4 experience, most of them I run into did.

5 And in looking at what 777 recommended, one can see of  
6 those 12 systems where we do have an alternative or a choice  
7 of using compressed asbestos sheet gasket, that probably about  
8 75 percent of them are, in fact, what I call yellow metals.  
9 And bronze, even though it's bronze colored, it's a yellow  
10 metal to the navy.

11 Q. All right. What does that tell you about those flanges  
12 or those fittings?

13 A. Well, it tells me that my experience and my old chief, to  
14 not use a grinder or something on a flange face. You're going  
15 to damage it. You can't do that to these soft metals, only  
16 scraping.

17 Q. All right. I want to switch gears for a second. Can you  
18 tell us, this looks like a picture from the Lexington; is that  
19 correct?

20 A. Yes, it is.

21 Q. All right.

22 A. Actually, we've got two valves shown here on the  
23 Lexington that I took this picture of. One in the background  
24 over here on the far left is a fire main valve.

25 Down here is the valve wheel and here's the packing gland



1 on it, which it's accessible. But the bottom of the valve is  
2 completely enclosed in hard asbestos insulation, cement. And  
3 the two flanges on this big gate valve -- this gate valve is  
4 probably 14 inch. It's a fire main which is used to fight  
5 fires on the ship. Completely enclosed.

6 So if you wanted to work on this guy, you would have to  
7 knock this stuff off to gain access to the bonnet gasket or  
8 the inlet/outlet flange gasket, whichever is which. I'd say  
9 inlet/outlet, but I don't know for sure. This demonstrates  
10 the use of hard insulation where low temperature, low pressure  
11 gaskets are used.

12 Q. Now, the valve on the right looks like it's insulated  
13 differently.

14 A. Yes, it is. This is on the 150-pound system. A little  
15 higher temperature, a little higher pressure. Insulation on  
16 this guy is what you would call a removal pad. And this is  
17 supposed to be copper wire on it which a guy could cut and  
18 snip and take off.

19 The pad itself is made out of asbestos-containing cloth.  
20 And generally they have asbestos cloth that's wired on the  
21 inside to help hold it together. And then packed around the  
22 valve in the open area where the bolts and the bonnet are is  
23 loose amosite asbestos would be around the bonnet.

24 Gaskets in this guy probably spiral wound or sheet  
25 gasket. Depends on what time it was worked on last and which

1 document they used, but there's kind of a break in there  
2 between using those two.

3 Q. All right.

4 A. It could have -- I think Dr. Longo found some sheet  
5 gaskets on one 150-pound system.

6 Q. You're making a reference to a witness for the committee  
7 in this case, Dr. William Longo; is that correct?

8 A. That is correct.

9 Q. All right. So this was taken on board the Lexington.  
10 What type of ship was the Lexington?

11 A. Lexington was an aircraft carrier.

12 Q. Essex class?

13 A. Essex class.

14 Q. Do you have any experience on Essex-class carriers?

15 A. That's what Oriskany was.

16 Q. All right.

17 A. I grew up on one.

18 Q. So we see valves insulated two different ways. What is  
19 the instruction that you would look to to understand how --  
20 whether to put a hard insulation on a valve or a pad?

21 A. Again, we go back to BuShips Technical Manual, to Chapter  
22 39. Or in 1966 it became 9390. The navy preserved the 39 by  
23 putting it in the middle for sailors.

24 But this is the 1966 version of Chapter 9390 issued in  
25 1966 that explains how to install insulation lagging as well

1 as what type of insulation covers go on what systems and what  
2 temperatures.

3 And I need to go get my water, excuse me.

4 Q. Okay. Sure.

5 Captain Wasson, for this chapter, are there diagrams in  
6 the chapter?

7 A. Yes.

8 Q. Diagrams on how to insulate --

9 A. Yes, there are contained in the text very nice diagrams  
10 to help sailors and shipyard workers on how to install  
11 insulation on various types of systems.

12 Q. So this -- we've labeled this permanent flange covers.  
13 Is this a diagram that you selected from this chapter?

14 A. Yes. It's Figure 9390.9. And in this case this is a,  
15 what you call low temperature, low pressure system.

16 And let me point out the -- here's the pipe coming  
17 through. And they show both the upper and lower half. Here's  
18 the two flanges for this particular pipe connection. And in  
19 here would be the gaskets. And here's the bolts that hold it  
20 together.

21 And as you can see, they've shown it diagrammatically.  
22 To take this bolt out, you've got to have some space over  
23 here. So when they put on the hard insulation, they brought  
24 it out to the pipe insulation out here. And this would have  
25 to be removed and taken off so you could get the flange apart.

1 I think it's worthy to note that it's asbestos cloth on  
2 the outside here on the pipe. This is the asbestos cement.  
3 And with cement -- finishing cement on the outside of it. And  
4 I said that finishing cement is Portland cement mixed in with  
5 it with which makes it very hard. You're not going to cut  
6 that with a razor knife.

7 On the inside, although not much pointed out on this  
8 diagram, the text if you read it points out this is packed  
9 with loose felt and the felt spec is the amosite felt.

10 Q. All right. Is this another picture of fittings that is  
11 depicted in Chapter 9390?

12 A. Yes. It's interesting that particular figure had  
13 survived since 1947 and here it is in the 1966 version. And I  
14 just made a -- compared one to 1972 and sure enough same  
15 drawing in 1972 in BuShips Technical Manual. So they like  
16 this drawing.

17 It's a T-pipe coming through here and up this way. We've  
18 got a flange on this end of the T, a flange over here on the  
19 T, and a flange up here. And as the diagram explains, we've  
20 got insulation felt packed around it. This is the  
21 amosite-containing stuff with finishing cement or just right  
22 on the outside of it.

23 Again, to work on this guy, you got to knock that stuff  
24 all off. But the bad news, once you get it off, you got all  
25 this fluffy stuff to deal with too before you can ever get to

1 your flange.

2 Q. Can you tell us about this picture. It looks like it  
3 came from the Massachusetts.

4 A. Yes, it is from the Massachusetts. It's the drop leg on  
5 the deaerating feed tank. It's a big gate valve. There's a  
6 flange up here at the top. Flange is buried under the  
7 insulation here. Here's the valve bonnet itself with its  
8 bonnet gasket up here. And to gain access to this guy, it  
9 looks like the insulator really did a good job of slicking it  
10 over with hard insulation. Got to take all that off if you  
11 want to work on that valve. And then, of course, packed  
12 around it you've got the loose stuff.

13 Q. Well, and let me ask you about this picture here. Is  
14 this also another example of the hard insulation?

15 A. Yes, it's another example of hard insulation. And that's  
16 on the Massachusetts also. It's -- the valve -- here's the  
17 big black valve wheel. The bonnet stands out a little bit  
18 from the background. It had a flange over here, a flange down  
19 here.

20 To do maintenance on that valve, one would have to remove  
21 that insulation material as well as the loose material that's  
22 packed in under it.

23 Q. All right. Now, let me ask you about this -- the  
24 portable pads, though, that we saw on the other valve earlier.  
25 Are there diagrams that talk about how to design or how to put

1 those portable pads or flexible flange covers on?

2 A. Yes, sir. You -- this slide goes back to BuShips  
3 Technical Manual, Chapter 9390, and it's Figure 7 from 9390.

4 Here we've got the center line of the pipe. Here's the  
5 piping sheet going through. Here's the flange, two flanges.  
6 In here would be the gasket. Here's the piping insulation on  
7 it. And since they've got two different types listed, this is  
8 probably a diagram for main steam because you got higher  
9 temperature insulation next to the pipe and lower temperature  
10 on the outside. And then it's got asbestos cloth over the  
11 outside.

12 Going over to the lagging cover, first you fill the  
13 inside with a loose asbestos felt. And on the top of it  
14 they've got a blanket that goes over and it's got asbestos  
15 cloth with -- this generally is filled with insulation felt as  
16 it's stated up here. And this would be wrapped all the way  
17 around it. And this one is glued in place. It says asbestos  
18 cloth is stuck -- stuck on with adhesive right here. So this  
19 could be removable probably with a razor knife and take off  
20 and you can save it and then reinstall it later.

21 Q. So you can -- this -- the purpose of these flexible  
22 covers or portable covers is to be able to take them on and  
23 off; is that correct?

24 A. Yes. So you don't have to remix cement and make a new  
25 hardening every time.

1 Q. And so in that process, though, are these things -- how  
2 often can you reuse these covers?

3 A. Well, if you're lucky, maybe two or three times and then  
4 they start getting pretty raggedy. They start falling apart.  
5 And you may have to wait until you're in port at an industrial  
6 facility to get a new pad made for you.

7 Q. All right. So when you take this off, it says packed  
8 with woven asbestos felt. You mentioned that. Is there a mil  
9 spec that tells you about that asbestos felt, what it's made  
10 of?

11 A. Yes. Yes. It used to be 32F3, which everybody has  
12 identified as amosite. And then it became the mil spec. Mil  
13 F15091. And it is asbestos-containing. And depending on  
14 manufacture, amosite was preferred, but I noticed Manville  
15 does put one out that has chrysotile in it.

16 Q. All right. Then you also mentioned ship drawings earlier  
17 in your testimony. Is this a ship drawing that you  
18 identified?

19 A. Yes, it is.

20 Q. It's for the 134 class cruisers. That's the heavy  
21 cruisers. The U.S. built three of them during the war. There  
22 was the Des Moines, the Salem, and the Newport News. And I  
23 even operated the Newport News in '67 off the coast of -- '68  
24 off the coast of North Vietnam.

25 But anyway, this is one of the ship's drawings. This

1 diagram here --

2 Q. These diagrams look like similar diagrams to the  
3 BuShips --

4 A. Oh, this diagram here is directly from BuShips Technical  
5 Manual, as well as this one is very similar to the BuShips  
6 Technical Manual.

7 The drawing provides to the ship builder a table so that  
8 he'll know how to make the cover for what different systems.  
9 Now, the systems are listed over here: Main steam, aux steam.  
10 It's not very legible. Auxiliary 600-pound steam. There's  
11 the various steam systems.

12 And with a known diameter -- well, this is the radius  
13 which is half the distance. You enter the table with the type  
14 of system and the radius and it will tell you exactly how to  
15 make your insulation pad. And you'll end up with one of these  
16 ones that wraps around.

17 Q. And so this is --

18 A. And the next slide.

19 Q. This is a blowup of that diagram?

20 A. Sure is. It's so you can see a little bit better detail  
21 on it, and it kind of gives you some detail. I think --  
22 here's the pipe again. Here's that radius I was talking  
23 about, E. Inside here you got the two flanges. There's a  
24 gasket in here. There's the bolt that's going to be taken  
25 out.



1           And then in this particular diagram they think about the  
2 maintenance guy and give him a section of removable pipe  
3 cuttering. So once he takes off the lagging pad, this piece  
4 should come out. He'll set it aside and now he can get the  
5 bolts out. Packed around the inside, as we've seen on all the  
6 other ones. Again, this says -- at the time it was made in  
7 '4 -- I think this drawing was signed in '46 is when it was  
8 signed. Had loose amosite that he packed around it. Then you  
9 make a cover to go over the outside of it.

10 Q. Now, we added the highlighting and the box, but the words  
11 are on the diagram itself; is that correct?

12 A. Oh, yeah. It appears when you see the highlighting on it  
13 somebody added that. That hadn't been added. That's on the  
14 drawing. Just highlighted what's on the drawing.

15 Q. This is another photograph from the Massachusetts. Can  
16 you tell us what this depicts.

17 A. This depicts one of these removable pads on the inlet or  
18 outlet flanges on both sides of this big valve. See here?  
19 You can see the lacing. That could be cut. This lagging pad,  
20 as sailors call it, and I do, would come off. You do have  
21 loose material packed in under it as we've talked about. This  
22 cloth in here is asbestos cloth. Probably going to be wire  
23 inserted cloth on the inside to help hold it together. And  
24 then the valve itself was -- had hard insulation over it.  
25 It's an inverted upside down valve.

1 Q. So this valve has hard insulation and then also has the  
2 portable covers; is that correct?

3 A. Yes. You've got an example of both in the same picture.

4 Q. All right. When you said that these valve covers can be  
5 removed a couple of three times, what happens to them? Why  
6 can't you keep using them over and over again like lacing up a  
7 pair of tennis shoes?

8 A. Well, steam systems in ships, you know, operate -- you go  
9 in and out of port. Heat up, cool down; heat up, cool down.  
10 As they cool down they attract moisture to them. And as I  
11 said, the wire inserted asbestos cloth on the inside starts  
12 getting moisture in it and it starts rusting out the chicken  
13 wire because that's what it is is chicken wire on the inside  
14 of it, and it starts rusting out. So after two or three times  
15 taking this on and off, straightening it out, chicken wire  
16 falls apart on it. So now you got insulation and pad that's  
17 not in very good condition. They just don't last real long.

18 Q. We've got, I think, one or two more diagrams. This looks  
19 like it's a valve. It's insulated in a similar way as the  
20 flanges that we looked at.

21 A. Yeah, this is another one from 9390, and it's really  
22 involved. There's -- all this stuff that's been highlighted  
23 for you is on the drawing. It's just so you can see it. In  
24 my opinion it's almost an overkill for all the different types  
25 of materials in it.

1           Here's the center of the pipe. Here's the inlet/outlet  
2 flanges. There's the bonnet of it or super structure with the  
3 gasket up here. We start with filling it on the inside with  
4 the loose amosite asbestos. And then the insulation, the  
5 lagging pad can go up around it. It's made to be removable.  
6 And they've used in here eighth inch flexible asbestos board.  
7 That's mil board, quarter inch. And then we've got cloth over  
8 the outside of it. And then it's got a lacing over the top of  
9 it as we seen in that previous actual photograph. This is  
10 what the lacing sort of looks like looking in plan view down  
11 from the top of it. That's a lot of work to make that guy.

12 Q. And this one last diagram that we have, can you tell us  
13 what this represents.

14 A. Well, it's -- this is pulled off that Salem-class cruiser  
15 drawing. It's one big long drawing, and this is down at the  
16 far end of it. Shows a pressure regulating valve. And it  
17 shows a removable pad on it, again, filled with loose asbestos  
18 around it. Then the cloth is made. And then these rings on  
19 it is just another type of way -- and it goes all the way  
20 across it so that could be removable. You could reuse the pad  
21 if you wanted to or had to.

22 Q. And that specifies "fill void spaces with loose amosite."

23 A. Yes, sir, that's right on the drawing.

24 Q. Okay. Now, Captain Wasson, this is one photograph we  
25 have. Is this a portable pad or a flexible cover from the

1 Massachusetts you identified?

2 A. Yes, it is. It's an angle stop. You see it's at an  
3 angle there. And the insulation pad on the bonnet actually  
4 covers the packing gland on it. These can be taken off. It's  
5 held both to the body blanket as well as where it's laced  
6 along here, you can take all that off, even the one around the  
7 body, and it would give you access to the valve's flanges  
8 after you clean all the loose amosite felt out of there.

9 Q. Okay. Captain Wasson, have you undertaken any study of  
10 the BuShips Technical Manual to try to understand the types of  
11 fittings that would call for the portable pads versus the  
12 permanent insulation?

13 A. Yes.

14 Q. Can you tell us what is -- what are the distinguishing  
15 characteristics between those systems where you would find  
16 hard insulation around a valve as opposed to the portable  
17 pads?

18 A. Well, the 1966 edition, and I trace the words all the way  
19 back to 1947, but the words are systems that are above  
20 389 degrees and it's on main auxiliary, cut-out stops or  
21 flanges that might be opened up to take down for doing  
22 maintenance. Those would be removable covers.

23 Then there's another section that says everything that's  
24 not included gets hard, would have the hard insulation on it.

25 Q. Would you expect to find the hard insulation around

1 valves or fittings that called for compressed asbestos sheet  
2 gaskets?

3 A. Yes, because they're the guys that are below 389 for  
4 sure.

5 Q. All right. Would you --

6 A. There's some exception to it too because you might have a  
7 section that's removed or something like that. But it's not a  
8 hard and fast rule; but in general low temperature, low  
9 pressure: Hard insulation.

10 Q. All right. Captain Wasson, you've identified the steps  
11 or we asked you to identify the steps for maintaining a pipe  
12 system and what you might have to go through, the steps, to  
13 replace a gasket; is that correct?

14 A. Yes.

15 Q. And is this a list that you prepared?

16 A. This is my list. I didn't take this from anybody's book  
17 or anyplace else.

18 Q. All right. So if someone, a shipyard worker or machinist  
19 in the navy is going to replace a gasket, what are the steps  
20 that he would have to go through?

21 A. Well, the first is remove the insulation. And we've  
22 talked about that in some length. We've discussed the  
23 removable as well as the hard. This is the video of taking  
24 the hard off which you actually seen earlier. This is what  
25 you've got to go through to get the hard off.

1           If you're lucky and you got the removable kind, you cut  
2     the wire, take the pad off, clean up the amosite or fluffy  
3     stuff inside and get it set aside and you don't have to go  
4     through this. Of course, the clean up after this is not fun  
5     either.

6     Q.   Well, in the machinery spaces aboard these ships,  
7     particularly on the larger ships, the aircraft carriers and  
8     such, are the engine rooms or the boiler rooms, are they one  
9     story, multi stories?

10    A.   Generally two levels: Upper level, lower level. Upper  
11    level has grates you can see right down through. So if you're  
12    doing this untidy operation, knocking this off, it falls down  
13    on to the deck plates of the lower level. Now, the lower  
14    level is not a hundred percent deck plates, but most of it is.  
15    Solid deck plates.

16    Q.   So back in the 1960s or 50s or historically during the  
17    rip out phase where there were not controls in the shipyards  
18    for asbestos insulation, how would -- is it possible that this  
19    work could be going on and people down below might get  
20    insulation on them?

21    A.   Yes, sir. I saw men on the Oriskany kind of had a little  
22    fluffy stuff all over them from what the shipyard was doing or  
23    one of their buddies was doing topside up in the upper level  
24    too. It's not a clean operation.

25    Q.   All right. So this is insulation -- oh, I wanted to ask

1     you another question. The percentage of asbestos that's in  
2     the pipe covering in insulation that was specified by the  
3     navy, are you familiar with that?

4     A. In general terms.

5     Q. All right. Can you tell us what percentage of  
6     asbestos --

7     A. The pipe covering was referred to as 85 percent mag or  
8     15 percent asbestos.

9             The amosite felt that I've talked a lot about, it had  
10    cotton with it, but I do not know without looking at the spec  
11    the exact percentage. It was not completely asbestos. It's  
12    asbestos-containing but it's not a hundred percent.

13    Q. Okay.

14    A. But the cements that we talk about, I don't know the  
15    percentage on them.

16    Q. Okay. All right. Good. So the next step is -- you've  
17    described is access to the gasket. You said the chain fall  
18    method, the wood wedges. Can you tell us what this means.

19    A. Yeah, I'd like to talk about bolts because they're --

20    Q. Sorry, I missed the bolts, sure.

21    A. On the low pressure, low temperature systems, which we  
22    saw a lot of bronze and brass valves in it, you've got a lot  
23    of brass bolts. Easy to remove because they're corrosion  
24    resistant as well as there's a lot of manila bolts, corrosion  
25    resistant, as well as stainless steel bolts.

1           So on the low pressure, low temperature system bolt  
2 removal, in general it's pretty easy once you've cleaned off  
3 whatever happens to be on the outside of it.

4           The flexitallic systems are these high temperature, high  
5 pressure. And as I pointed out, they suck moisture back into  
6 them as they cool. The bolts get very, very rusty and often  
7 you have to use a cutting torch just to get the bolts out.  
8 They're a mess.

9           So we got the bolts out. Now we got to get the gasket  
10 out.

11          Q.    Okay. So we have a video from Mr. Boelter's pipefitter  
12 exposure assessment that I wanted to ask you about. It looks  
13 like he's spreading the flange there with a flange spreader;  
14 is that correct?

15          A.    That's correct. That's a device I didn't have on board  
16 ship. It's really nice to have. Professional guys have it.  
17 We used the wooden wedges to separate the flanges.

18          Q.    Do you hammer in wooden wedges in between the --

19          A.    Yes, that's what you did. If you got heavy wall pipe and  
20 you got to separate it to get a gasket out, if you're only  
21 doing the gasket, you got to get them separated some way,  
22 either wooden wedges or get a chain fall and put it on your  
23 system.

24          Q.    How far can you spread these flanges like this? Can you  
25 get them --



1 A. No more than an eighth or a quarter of an inch at the  
2 very most. Quarter inch is probably stretching it. Because  
3 the high pressure, high temperature systems, they're very  
4 inflexible. And if you put a permanent set on these guys, you  
5 know, if you put a new gasket ain't going to help you. You  
6 just created a new problem for yourself. So you've got to be  
7 very careful on flange separation.

8 Q. Well, why can't you just separate them by six inches or a  
9 foot or something like that?

10 A. Because they're anchored everywhere. You can just barely  
11 get them open enough to do the work.

12 Now, in this case if you're going to take the complete  
13 valve out, now you got access to the flange. Now you can  
14 clean the flange up and see what you're doing a little better  
15 rather than using a flashlight and using a mirror to do, which  
16 is often done if you're just replacing the gasket.

17 Q. So you're not going to get them far enough to even get a  
18 hand wire brush much less a big grinder.

19 A. No, no.

20 Q. And did you all use high speed electric grinders back in  
21 the 1960s?

22 A. Absolutely not. It was forbidden to do that to any  
23 flange regardless of metal.

24 Q. So the next step's cleaning the flanges, locating a  
25 replacement gasket, installing the new gasket, realigning the

1 flange, replacing and retorque bolts. Is that your  
2 understanding?

3 A. Yes.

4 Q. How much time does this type of technique -- can you give  
5 us a sense of the time and motion involved here.

6 A. Well, cleaning the flanges regardless of what was used on  
7 it is a very short -- it doesn't take long at all to clean the  
8 flanges.

9 Finding your gasket sometimes can be troublesome because  
10 you may end up having to make your compressed asbestos sheet  
11 gasket yourself. And you can only guess the trouble you can  
12 go to in trying to make one for flanges that have an eighth of  
13 an inch clearance. Probably better off to go ahead and pull  
14 the valve off and make the gasket. In making a compressed  
15 asbestos sheet gasket a couple of ways it was often done was  
16 put chalk on the flange, press your sheet gasket against it,  
17 take your impression off, take tin snips and cut around it,  
18 knife to cut the outside, punch your holes.

19 Or you might have one already made that you can put on  
20 there. If it's a flexitallic one, which we saw those. They  
21 come in various sizes. You get the right one, put the  
22 retainer ring on it so it centers the bolts and you put it in.

23 But in locating a gasket can be troublesome for you.

24 Once you got the gasket, your flanges are cleaned, just  
25 put it in there. Let your flanges go. Release them from

1     whatever you have on it. They come back together. And then  
2     you retorque the bolts and put it back together. Now you get  
3     to reinsulate it.

4     Q.    Okay. That's one of the last steps.

5           We have another video from Mr. Boelter's project of  
6     mixing a small bag of insulation. Now, on board ship, if  
7     you're replacing a gasket on a flange, would you be using a  
8     big bag or a small bag of insulating cement?

9     A.    We only had small bags. I don't even know if they were  
10    50 pounds. They may have been 25 pounds, more like it.

11           This would be the case where you got hard insulation to  
12    return on to your valve or flanges you took off. You got to  
13    get your loose insulation packed around it. That would be  
14    your amosite felt. And then you start spreading on your  
15    cement. Which as you can see mixing up the cement, it's a  
16    dusty operation. If you're mixing any concrete up for a post  
17    or something, you know when you dump it in, guess what? You  
18    got a lot of dust. If you add water to it, you get dust.

19    Q.    All right.

20    A.    Once you get it mixed, though, now you you can start  
21    working with it and put it on.

22    Q.    Looks like there's water in the bottom of the bucket  
23    already.

24    A.    Yeah, but when it hits it, it makes dust, too, even  
25    though you got water there already.

1 Q. All right. And does this video fairly and accurately  
2 represent what you saw when sailors would mix up small amounts  
3 of insulation and cement?

4 A. I saw my ship engineers do this on all ships.

5 Q. Then the last stage I believe you have of maintaining the  
6 piping systems was clean up; is that correct?

7 A. Yes, sir.

8 Q. We have a little video. Is this the type of thing that  
9 would be done on the lower deck plates?

10 A. Yeah. You had deck plates. The kids would sweep it up  
11 and put it in trash cans. Obviously, we didn't take on jobs  
12 of this nature that had that much. We had just small, small  
13 amounts. But in the shipyard where the shipyard did it, yeah,  
14 they made big messes and they weren't very tidy about cleaning  
15 up. We ended up having to finish doing the rest of the work  
16 for the shipyard.

17 Q. Okay. Thank you, Captain Wasson. I think you can take  
18 the stand again.

19 (Witness resumed the witness stand.)

20 Q. Captains Wasson, I'd like to show you a few documents if  
21 we could.

22 MR. HARRIS: Your Honor, may I approach?

23 THE COURT: Yes.

24 Q. This first document I have handed you, Captain Wasson,  
25 can you tell us what the name of the label is on the bottom of

1 it.

2 A. It is NavShips 0901 --

3 Q. I'm sorry, the exhibit sticker, I'm sorry.

4 A. Oh, the exhibit sticker. GST15701.

5 Q. All right. And can you tell us what this document is.

6 A. It is Chapter 9390. It's a 1965 edition with the 1966  
7 change which makes it the 1966 edition of Chapter 9390.

8 Q. Are you familiar with this document?

9 A. Yes, sir. It's the same one we were showing diagrams  
10 from it on the screen just a moment ago.

11 Q. And is this a document that you identified and located  
12 and used in connection with your report in this case?

13 A. I did.

14 MR. HARRIS: Your Honor, at this point or at this  
15 time we offer this document, this exhibit --

16 THE COURT: All right.

17 MR. HARRIS: -- into evidence.

18 THE COURT: We'll admit it.

19 MR. FINCH: No objection.

20 (Debtors' Exhibit No. GST15701 was received into  
21 evidence.)

22 Q. Captain Wasson, I want to hand you a document we've  
23 labeled GST15702. Can you tell us what this document is.

24 A. You read the document number correct on it. And it is  
25 the 196 -- November '65 edition of NavShips Manual 9390. This

1 is the 1965 edition prior to having the '66 change made to it.

2 Q. All right. This is a document that you have identified  
3 and relied upon?

4 A. Yes.

5 Q. In your -- for your opinions?

6 A. Yes, it is.

7 MR. HARRIS: Your Honor, at this time we offer this  
8 exhibit.

9 THE COURT: We'll admit it.

10 MR. FINCH: No objection.

11 THE COURT: What number was that again?

12 THE WITNESS: GST15702.

13 (Debtors' Exhibit No. GST15702 was received into  
14 evidence.)

15 Q. Captain Wasson, I'm handing you a document labeled  
16 GST15 -- I'm sorry, GST13150A. Can you tell us what this  
17 document is.

18 A. Yes. It's GST13150A, as in alpha. And it's entitled  
19 "Bureau Ships Specification for Felt Insulation Amosite  
20 Asbestos," and it's dated 1 March 1937. And this is the spec  
21 for the amosite felt that we've been talking about.

22 Q. That was labeled on the ship drawings we saw?

23 A. Yes, sir. Particularly the CA132 class heavy cruisers.

24 MR. HARRIS: At this time, Your Honor, we offer this  
25 exhibit.

1 MR. FINCH: No objection to that, Your Honor.

2 THE COURT: It's admitted.

3 (Debtors' Exhibit No. GST13150A was received into  
4 evidence.)

5 Q. Captain Wasson, at this point I'm going to offer -- or  
6 show you a document that is marked as Exhibit GST13150B; is  
7 that correct?

8 A. Yes, GST13150B, as in bravo.

9 Q. And can you tell us what this document represents.

10 A. It is the old navy department specification for packing,  
11 sheet, asbestos, compressed. And it's symbol 2150.

12 Q. And can you tell us is this a document that represents  
13 the military specifications for the compressed asbestos sheet  
14 gaskets?

15 A. This is a forerunner to the mil spec.

16 Q. All right.

17 A. This is the navy spec and later on the mil spec got  
18 issued.

19 Q. And is that part of this packet of documents, the  
20 subsequent documents?

21 A. It may be. I haven't thumbed all the way through. It  
22 looks like -- oh, yes. You've got the whole pedigree of the  
23 document here as it changed over to another number.

24 MR. HARRIS: Okay. At this point, Your Honor, we  
25 offer this exhibit into evidence.

1 MR. FINCH: No objection. Just -- just so we're  
2 clear, this is a composite of the various iterations of what  
3 became the mil spec; is that correct?

4 MR. HARRIS: Yes.

5 MR. FINCH: Okay. No objection, Your Honor.

6 THE COURT: All right. It's admitted.

7 (Debtors' Exhibit No. GST13150B was received into  
8 evidence.)

9 THE WITNESS: Looks like it's actually a federal  
10 spec. I didn't thumb all the way. There's mil specs and  
11 federal specs, but it looks like a complete package for that.

12 Q. Okay. Captain Wasson, I think you cut the court off.

13 THE COURT: We'll admit it.

14 MR. HARRIS: Thank you, Your Honor.

15 THE WITNESS: I'm sorry, Your Honor.

16 THE COURT: That's fine.

17 Q. Captain Wasson, I want to show you an excerpt from Dr.  
18 Longo's report. He's the expert witness designated by the  
19 committee. He makes a statement in his report that I just  
20 wanted to run through quickly. He's talking about portable  
21 pads that were used on ships.

22 He says, "Examples of these portable pads can be seen in  
23 the attached photographs to this report that were taken by my  
24 group during our visit to the USS Lexington aircraft carrier  
25 in 2010. Every insulated valve that I observed on that ship



1 was covered with these types of portable pads."

2 Is that your recollection of what he said in his report?

3 A. Yes, sir.

4 Q. Now, did you go on board the Lexington after this?

5 A. I did, on April 29th.

6 Q. And did you take photographs of valves that you saw?

7 A. I did.

8 Q. And are those valves -- are those photographs or some of  
9 those photographs actually included here in your slide  
10 presentation?

11 A. Yes, they are.

12 Q. So this is one that we saw earlier; is that correct?

13 A. Yes, sir. That was the first slide we showed and there's  
14 a case of hard insulation over a valve.

15 Q. Another example of hard insulation on the valve?

16 A. Yes, sir.

17 Q. Another example of hard insulation?

18 A. Yes, sir. Both flanges were under, the bonnet was not.

19 Q. More valve pictures --

20 A. The complete --

21 Q. -- of hard insulation?

22 A. Complete valve's under hard insulation.

23 Q. Another picture of a valve?

24 A. It's a valve -- it's under hard insulation. The packing  
25 gland's partly visible there on it, though.

1 Q. Another valve?

2 A. That's another fire main valve that had hard insulation  
3 over it back in, I think number four fire room.

4 Q. Another valve?

5 A. That's an LP drain that had hard insulation over its  
6 flanges.

7 Q. Another valve?

8 A. A supply valve -- I mean, not a supply valve, just a  
9 valve.

10 Q. Did you find plenty of valves on board the Lexington that  
11 had hard insulation --

12 A. Yes, sir.

13 Q. -- on them?

14 A. I found quite a few.

15 Q. Okay. You also looked at the valves where Dr. Longo had  
16 harvested those valves in 2010 that are included in his latest  
17 study; is that correct?

18 A. Yes. Yes, I did.

19 Q. Can you tell us the types of systems that they were on.

20 A. Yes. They were on the constant and intermittent steam  
21 and those two systems operate at about 50 pounds.

22 Q. Okay. More valve pictures. Do you know how many  
23 pictures you took before you stopped taking pictures of hard  
24 insulated valves?

25 A. No, sir, I don't. Fifty or 60.

1 Q. Oh, but here's a portable pad on board the Lexington; is  
2 that correct?

3 A. Yes.

4 Q. And can you tell us about the condition of that pad.

5 A. Getting very tired. It's pretty obvious. The internals,  
6 which is the amosite felt on the inside of it, is starting to  
7 come out and the lacing on it had to be stretched to pull it  
8 back together again.

9 I've got a correction, Mr. Harris, on Dr. Longo's valve.  
10 I said they were on constant and intermittent. He also pulled  
11 out two down in the main engineering space, one in number two  
12 fire room and one in number two engine room. Both of those  
13 were on the 150-pound system.

14 Q. So two were on the 150-pound and two were on the  
15 50-pound?

16 A. There were three.

17 Q. Three?

18 A. Three on the 50-pound.

19 Q. Okay. Captain Wasson, I want to show you these  
20 photographs that you've just shown the court. I believe these  
21 are marked as GST15713 through GST15731; is that correct?

22 A. Let's see 15713, 14, 15, 16, 17, 18, 19, 20, 21, 22, 2 --  
23 I've got two 22s.

24 Q. Okay.

25 A. Two 22s.

1 Q. Would you mark the second one --

2 A. Twenty-four -- the second one should be 23. And I will  
3 just make that change myself on the second 22.

4 It reads 23 now. And we've got 24, 25, 26, 27, 28, 29,  
5 30, and 31.

6 MR. HARRIS: Your Honor, at this time we offer those  
7 photographs into evidence.

8 MR. FINCH: No objection.

9 THE COURT: All right. They're admitted.

10 (Debtors' Exhibits Nos. GST15713 through GST15731  
11 were received into evidence.)

12 MR. HARRIS: Thank you, Captain Wasson.

13 THE WITNESS: Thank you, Mr. Harris.

14 THE COURT: Mr. Finch.

15 CROSS EXAMINATION

16 BY MR. FINCH:

17 Q. Good afternoon again, Captain Wasson.

18 A. Good afternoon, Mr. Finch.

19 Q. You've worked for asbestos defendants in asbestos  
20 litigation on more than 50 cases; is that right?

21 A. Yes, I have, sir.

22 Q. You first started working for asbestos defendants in  
23 2003; is that right? Thereabouts.

24 A. That's approximately correctly.

25 Q. The defendants you've worked for include Garlock at least

1 five or six times.

2 A. Yes, sir.

3 Q. Aurora Pump.

4 A. Yes.

5 Q. That's a company that makes pumps and valves that would  
6 have either asbestos-containing packing or gaskets as part of  
7 the equipment, right?

8 A. I believe pumps only.

9 Q. Cleaver Brooks, that's an asbestos defendant you've done  
10 work for?

11 A. Yes, sir.

12 Q. That's a company that -- what do they make? Boilers,  
13 right?

14 A. Boilers and evaporators.

15 Q. And the boilers would have both insulation on the  
16 exterior and they would have -- sometimes they would have  
17 gaskets around pieces of machinery attached to the boiler,  
18 correct?

19 A. Their boilers had metal over the outside of them and  
20 insulation under it.

21 Q. Okay. Elliott, what kind of -- that was an asbestos  
22 defendant.

23 A. They made deaerating feed tanks. They made super  
24 chargers.

25 Q. Turbines.

1 A. Turbines.

2 Q. And those turbines would have asbestos insulation  
3 sometimes on or around them and sometimes the turbines would  
4 have other asbestos components, correct?

5 A. That is correct, sir.

6 Q. You worked -- done work for Jerguson Valves, correct?

7 A. Yes, sir.

8 Q. And Jerguson Valves, they make valves obviously, right?

9 A. Yes, sir.

10 Q. And that would have asbestos components, either packing  
11 or gaskets on or around the valves, right?

12 A. Yes.

13 Q. You've also worked for a company called Mundet or Crown  
14 Cork & Seal, right?

15 A. Yes.

16 Q. Mundate is a company that made asbestos-containing  
17 insulation, correct?

18 A. Yes, sir.

19 Q. And you've also done at least one case for Bondex, right?

20 A. Yes.

21 Q. You've never testified for an individual sailor or anyone  
22 else that has mesothelioma who was bringing a lawsuit,  
23 correct?

24 A. No, but I was asked.

25 Q. But you've never -- you've never appeared in a courtroom

1 and testified on behalf of a victim, right?

2 A. No, I did not.

3 Q. You spend about six to eight hundred hours a year on  
4 asbestos litigation.

5 A. Yeah, a little bit less than eight, but somewhere in that  
6 vicinity.

7 Q. Okay. And you spent at least as of the time of your  
8 deposition, you've spent about 300 hours working on the  
9 Garlock case, this case?

10 A. Yes, sir. We're up a little higher than that now.

11 Q. Okay. So your bill in this case is about a hundred  
12 thousand dollars; isn't that right?

13 A. Yes, sir, if you add it all up.

14 Q. Let me ask you some questions about your background and  
15 experience.

16 In this crude drawing I've got land and I've got water.  
17 Do you see that?

18 A. Yes, sir.

19 Q. Okay. Is it fair to say that you don't have any personal  
20 experience with the use of asbestos-containing products  
21 whether they're gaskets or insulation or anything else for  
22 industrial facilities on the land?

23 A. No, I do not.

24 Q. Okay. So that would include power plants, steel mills,  
25 industrial facilities. You don't have any experience at all

1 with that, correct?

2 A. No, I do not.

3 Q. And Garlock sold asbestos-containing sheet gaskets to be  
4 used in those kind of facilities. You do know that, correct?

5 A. It's an assumption I've got to make. It's reasonable. I  
6 haven't researched that. I don't know.

7 Q. Okay. You wouldn't be able to dispute it if I were to  
8 tell you that, right?

9 A. No, I wouldn't.

10 Q. And so you don't know how many millions or tens of  
11 millions of sheet gaskets Garlock would have sold to be used  
12 on the land, correct?

13 A. No.

14 Q. Okay. You also likewise don't know what trades or what  
15 types of jobs people would -- job titles people would have for  
16 changing gaskets or working with gaskets or even working with  
17 insulation in land based facilities, correct?

18 A. No, sir, that's not an area of my experience.

19 Q. Okay. Now, on the water, is it fair to say that the  
20 vast, vast majority of your experience relates to the United  
21 States Navy, correct?

22 A. Yes, sir.

23 Q. Okay. You're aware that there are boats owned by  
24 civilian companies, right?

25 A. Yes, sir.



1 Q. Merchant Marine owns ships, right?

2 A. Yes, sir.

3 Q. There are lots and lots and lots of boats on the water  
4 that aren't owned by the United States Navy, correct?

5 A. That's correct.

6 Q. You don't have any personal experience with the use of  
7 gaskets and the tools used to remove gaskets on civilian  
8 boats, correct?

9 A. I've been involved in the conversion of one ship, but it  
10 was Russian owned so, no.

11 Q. Okay. So you would -- it would be fair to say that your  
12 experience in terms of the trades that would have worked on  
13 asbestos-containing gaskets or for things that were on the  
14 water would be pretty much entirely navy ships, right?

15 A. Yes, sir.

16 Q. And the tools and methods would be pretty much entirely  
17 navy ships, right?

18 A. Yes.

19 Q. Okay. And is it fair to say that most of your hands on  
20 eyeball experience in the navy involved ships at sea?

21 A. No.

22 Q. Well, you spent a lot of time on ships at sea, correct?

23 A. Yes, sir.

24 Q. Okay. Let me ask you, it was never your job to tell the  
25 navy or any part of the navy how to comply with OSHA

1 regulations in removing gaskets, right?

2 A. No.

3 Q. Okay. And you don't know how many asbestos-containing  
4 sheet gaskets Garlock sold the navy, do you?

5 A. No.

6 Q. You talked a little bit about -- for purposes of the  
7 record, Your Honor, can I -- I'm going to mark this as ACC  
8 Demonstrative Exhibit Number 1.

9 THE COURT: All right.

10 MR. FINCH: It's not for substantive evidence. It's  
11 just so Your Honor will have this little drawing.

12 Q. You talked on direct examination about where sheet  
13 gaskets were used and I believe you said -- you called it low  
14 pressure, low temperature, right?

15 A. Yes, sir.

16 Q. Now, the pressures and temperatures, some of those  
17 applications were temperatures as high as 425 degrees,  
18 correct?

19 A. That's the temperature that the gasket is rated for use.  
20 The 100 PSI you can't get to 425.

21 Q. You can get to 225, 250, right?

22 A. Yeah, it's the saturation temperature.

23 Q. Okay. So you could have a gasket at 150 PSI and  
24 200 degrees.

25 A. Yes.

1 Q. And you could burn yourself if you touch a pipe that has  
2 something going through it at 200 degrees.

3 A. Yes, you would.

4 Q. You talked about the -- just get something real clear.  
5 Am I correct that you personally have only removed a gasket  
6 from a flange five or six times?

7 A. I've not done it that many times.

8 Q. You have not done it that many times.

9 A. No. I've observed it hundreds of times and probably  
10 three or four I've helped take one out.

11 Q. Okay.

12 A. Maybe five or six is on the high side. That's an  
13 estimate. It just sounds high when you say five or six.

14 Q. Okay. All right. So it's less than five or six times?

15 A. Yeah.

16 Q. You would expect a pipefitter to have changed gaskets  
17 hundreds to thousands of times in their career, correct?

18 A. Maybe hundreds. Not thousands, though. It's more than a  
19 lifetime.

20 Q. Even in your experience you did see sheet gaskets stick  
21 to flanges, correct?

22 A. Repeat your question.

23 Q. In your experience, sometimes you saw sheet gaskets stick  
24 to flanges, correct?

25 A. Yes.

1 Q. And you had to use -- you saw people using scrapers and  
2 wire brushes to remove the gasket residue from the flange.

3 A. Generally a putty knife or a piece of smashed copper to  
4 scratch it off. Wire brush was the exception.

5 Q. You're not saying that sailors never used -- or let me  
6 make the question broader. You're not saying that no one ever  
7 used a power grinder to remove a gasket from a flange, are  
8 you, sir?

9 A. In my experience I never saw that.

10 Q. But you're not saying that people didn't do it.

11 A. I have not seen that done and all my chiefs and first  
12 class, everybody don't do that. That was not something that  
13 the navy subscribed to ever.

14 Q. Are you familiar with the regulations from the Norfolk  
15 Naval Shipyard in 1991 that told people not to use power tools  
16 to remove gaskets from flanges?

17 A. I'm not familiar with that, but I know they implemented  
18 something like that as an asbestos abatement procedure in that  
19 shipyard.

20 Q. In that shipyard in the late '80s, early '90s.

21 A. Yes, sir, the late time framework.

22 Q. Okay. That gets me to an interesting point. Before I  
23 get there, you talked about portable pads and you showed the  
24 judge some pictures of portable pads, right?

25 A. Yes, sir.

1 Q. And would you agree with me that whether or not someone  
2 had to use a hammer to beat asbestos insulation off of a pipe  
3 to get to a flange is going to depend on the facts and  
4 circumstances of that individual person's situation?

5 A. I don't understand your question.

6 Q. Well, you would agree with me that if somebody had to  
7 remove insulation from a flange in 1975, it may or may not be  
8 asbestos-containing insulation they had to remove, correct?

9 A. That is true.

10 Q. Okay. And you would agree with me that if somebody had  
11 to remove asbestos insulation from a flange, they may or may  
12 not have had to use -- to remove a portable pad. Sometimes it  
13 might have been hard cement sometimes it was a portable pad,  
14 right?

15 A. Yeah, if you put both portable and hard in the same  
16 statement, yes, the portable one would come off. The hard  
17 one, you're going to have to knock it off some way.

18 Q. And sometimes all you would have to do was remove the  
19 portable pad, right?

20 A. When you got a portable pad, you remove the portable pad.

21 Q. Okay. Now, 1972 OSHA passed regulations dealing with  
22 asbestos thermal insulation, right? You're generally familiar  
23 with that?

24 A. I'm not familiar with OSHA, sir.

25 Q. You're familiar with the navy started paying attention to

1 controls for asbestos insulation beginning in the 19 -- the  
2 early to mid 1970s.

3 A. Yes, sir, I'm familiar with the change to the Bureau  
4 Ships Technical Manual in '72 that placed controls on the  
5 handling of asbestos-containing materials.

6 Q. Okay. And by 1975, the navy was trying to not have any  
7 asbestos insulation put on new ships, correct?

8 A. Yes, sir.

9 Q. And that was true even in the '72 to '75 time frame, they  
10 were telling the builders of ships let's try to get away from  
11 asbestos insulation and use something else, right?

12 A. That's correct. That was a transition period.

13 Q. Okay. And while you might have found some asbestos  
14 insulation, put it on a ship that was being built in 1974,  
15 1975, the goal was to not have it in there, correct?

16 A. Yes, sir.

17 Q. Okay. Asbestos-containing gaskets continued to be sold  
18 to the navy well up into the 1990s, correct?

19 A. And beyond as far as -- I have no experience beyond '90  
20 when I left the navy.

21 Q. Okay. So at least until the time you quit,  
22 asbestos-containing gaskets were being sold to the navy and  
23 everywhere else by Garlock as far as you know.

24 A. Or any other company, far as that goes.

25 Q. Okay. You would agree with me that at least by here,

1     there would have been controls in place for asbestos  
2     insulation so that you -- I think you -- I think you said on  
3     direct examination they started paying attention to that and  
4     they would put up like barriers, negative air barriers to keep  
5     asbestos dust from -- insulation work away from other people,  
6     right?

7     A.    That's what's set forth in the NavShips Technical Manual.

8     Q.    Okay.  And there weren't any kind of similar controls  
9     relating to gaskets until what you just told me about the late  
10    '80s, right?

11    A.    I don't know of any other than the one you mentioned from  
12    Norfolk which is '91 which is beyond my time in the navy,  
13    actually.

14    Q.    Okay.  So let's talk about the time frame 1975 to 1990.  
15    Can we talk about that, sir?

16    A.    Certainly.

17    Q.    Okay.  If somebody had to do gasket work, change gaskets  
18    in 1980, there would be controls in place to limit or  
19    eliminate the asbestos exposure from insulation, correct?

20    A.    Yes, there would.

21    Q.    There wouldn't have been any controls in place for  
22    gaskets during that time frame, correct?

23    A.    There were none required then.

24    Q.    So, you would agree with me, in the circle number one,  
25    there are going to be lots of people.  You don't know how many

1 people that would have done work with gaskets with no  
2 controls, but the insulation exposures would have been  
3 controlled, right?

4 A. Yes, sir.

5 Q. Okay. And do you know how many tens of thousands,  
6 hundreds of thousands, millions of people would have been  
7 involved in that? You have no idea.

8 A. I have no idea. I wouldn't want to quantify it as you  
9 have.

10 Q. Okay. And there's going to be testimony in this case  
11 that the median latency period for mesothelioma is about 35  
12 years. That means half of the cases, the first exposure was  
13 more than 35 years ago; half the cases, the exposure was less  
14 than 35 years ago. You're familiar generally with the concept  
15 of latency for mesothelioma, right?

16 A. Yes, sir.

17 Q. Okay. How many years is between 1975 and 2010?

18 A. Twenty-five years. Wait a minute. I left ten off.  
19 Thirty-five years.

20 Q. Thirty-five years. Finally, and I'll mark this as --  
21 Your Honor as ACC Demonstrative Exhibit Number 2 for  
22 demonstrative purposes, what I just drew up here.

23 THE COURT: All right.

24 Q. This is -- you attached to your report your resume and a  
25 list of cases in which you have testified; is that right,



1 Captain Wasson?

2 A. Yes, sir.

3 Q. And one of the ships you served on was the USS Belleau  
4 Wood; is that right?

5 A. I didn't serve on the ship, sir.

6 Q. You were a program manager and ship superintendent for  
7 the USS Belleau Wood; is that right?

8 A. Yes. That was while I was in the Long Beach Shipyard.

9 Q. And that ship was named after a battle in France that  
10 took place in World War I, right?

11 A. That's correct.

12 Q. And it was actually spelled B-e-l-l-e-a-u Wood. That's  
13 how the name of the ship is spelled?

14 A. I'm not noted for spelling correctly, but it doesn't  
15 change the content of my resume.

16 Q. And in your list of testimony, you've got a couple of  
17 references to the Supermen Court of the State of New York. I  
18 just saw the Superman movie with my family last weekend. It's  
19 not a great movie. But you meant to say superior court,  
20 right, Captain Wasson?

21 A. Yes, sir. But again, it doesn't change the content. I  
22 think you know what it was.

23 Q. I'm not holding it against you at all. You've got about  
24 a thousand words in your resume. And anybody can make a small  
25 number of mistakes; isn't that right?

1 A. One tries not to.

2 Q. But there's no such thing as perfection in this world;  
3 isn't that true, sir?

4 A. Yes, there is.

5 Q. Well, human beings are -- the people who wrote -- the guy  
6 who wrote the good book might be perfect, but human beings are  
7 not perfect. Do you agree with that?

8 A. On occasion we're not.

9 Q. And so in your work in testifying, you listed about seven  
10 or eight trials up there; is that correct, Captain Wasson?

11 A. Ten or eight what?

12 Q. Trials. You got -- "I provided trial testimonies in the  
13 following cases," and you've got one, two, three, four, five,  
14 six, seven, eight cases.

15 A. Eight cases.

16 Q. Okay. And in those cases, there were depositions of the  
17 plaintiff and his co-worker often.

18 A. Yes, there were.

19 Q. And some of those depositions, particularly in California  
20 cases, there might be 10, 15 volumes of transcript where the  
21 mesothelioma victim was asked questions for ten or eleven  
22 straight days about what he did, right?

23 A. Yes, sir.

24 Q. And some of -- and in all those cases, you would -- not  
25 all, but you would generally have the ship specifications for

1     whatever ship -- ship or ships the sailor or the plaintiff was  
2     serving on, correct?

3     A.    Yes, sir.

4     Q.    And you would come in and testify in a court of law,  
5     correct?

6     A.    Yes, sir.

7     Q.    And who would you -- who would you be talking to?  You  
8     wouldn't be talking just to a judge.  Wouldn't there be people  
9     in a jury box?

10    A.    Yes, sir, there was a jury.

11    Q.    And you wouldn't come in and say that sailors were lying  
12    if they said they used power tools to remove asbestos sheet  
13    gaskets, would you?  You wouldn't tell the jury that this man  
14    is lying, this sailor is lying.

15    A.    No, sir, that's not what I would say.  I would say in my  
16    experience I have not seen that done.

17    Q.    Okay.  But -- and at the end of the day, who gets to  
18    decide whether the mesothelioma victim is telling the truth or  
19    not?  You or those people in the box?

20    A.    The jury does, I believe, sir.

21           MR. FINCH:  Okay.  That's all the questions I have,  
22    Your Honor.

23                               CROSS EXAMINATION

24    BY MR. GUY:

25    Q.    Captain Wasson, Jonathan Guy for the FCR.

1 A. Jonathan Guy?

2 Q. Yes, sir.

3 A. Yes, sir. You asked me questions during my deposition.

4 Q. Yes, sir. And first I wanted to thank you for your  
5 service.

6 I have a couple of brief questions.

7 Would you say that you're familiar with the  
8 asbestos-containing products that are used on navy ships for  
9 the period that you had experience with them?

10 A. Yes, I've looked at the specifications on them. I have  
11 not committed them to memory.

12 Q. But you would be able to share your expertise as to the  
13 identification of the asbestos-containing products or the  
14 different types of asbestos-containing products on the navy  
15 ships with Garlock, correct?

16 A. I believe I can.

17 Q. And you shared that expertise with Garlock when you were  
18 acting on behalf of them as an expert witness, correct?

19 A. Yes, I did.

20 Q. Did you ever come into contact with a Garlock product  
21 during all your years in the U.S. Navy?

22 A. You know, I've been asked that question before and I  
23 probably did, but I do not have a specific memory of it.

24 Q. Captain Wasson, it's not your opinion that the removal of  
25 asbestos-containing gaskets does or does not release asbestos,

1 correct?

2 A. In my experience in removing them, what I have seen, I've  
3 not observed any dust.

4 Q. I want to specifically ask you about your opinion about  
5 asbestos, though, because you're not an epidemiologist,  
6 correct?

7 A. Correct.

8 Q. Do you recall reading your transcript of your deposition?

9 A. Yes, I do.

10 Q. Do you recall that I asked you whether you had an opinion  
11 or not as to whether work around asbestos-containing gaskets  
12 releases asbestos fibers rather than just dust?

13 A. I don't recall that, but I believe I could answer still.  
14 I probably couldn't see it.

15 Q. Well, let me ask you the question very specifically. I'm  
16 not asking you about dust. I'm asking you about asbestos  
17 fibers. Is it your opinion that work around  
18 asbestos-containing gaskets does or does not release asbestos  
19 fibers?

20 A. My opinion is no.

21 Q. I'm just going to pull up your transcript, sir.

22 Pull up page 76, please.

23 Captain Wasson, you just touched upon this in answers to  
24 questions that Mr. Finch posed to you. You're aware of  
25 situations where workers removed gaskets post-1972 that

1 contained asbestos where no asbestos insulation was present,  
2 correct?

3 A. When you say post, you mean prior to '72?

4 Q. Post '72?

5 A. After '72. Yes. It continued on during my tour of duty.

6 Q. And you said in answer to my question about that, you  
7 said, "Yes, I saw that type of work being done." Can you read  
8 that, sir?

9 A. Yes, sir, I saw that type of work being performed.

10 Q. So we've got asbestos-containing gaskets but we have no  
11 asbestos-containing insulation, correct?

12 A. Well, post '72 does not mean you didn't have asbestos  
13 insulation because those ships continued to operate, some of  
14 them. Take the -- the Lexington went to 1991. The Kitty Hawk  
15 to 2009. So one never knows for sure that it's not  
16 asbestos-containing. In general should not be.

17 Q. And in answer to your statement that you had seen that  
18 type of work being done, namely removal of asbestos-containing  
19 gaskets with no asbestos-containing insulation present. I  
20 asked, "And your testimony would be the same in terms of in  
21 those situations you didn't see any visible dust, correct?"  
22 Do you remember that?

23 A. Let's pull it up and look at it.

24 "And your testimony would be the same in terms of in  
25 those situations you didn't see any visible dust."

1 I don't think I understand the new question you're asking  
2 me.

3 Q. It's your testimony, sir, that the removal of gaskets  
4 doesn't create lots of dust, correct?

5 A. Not that I could see.

6 Q. And my question to you was, "But you couldn't testify as  
7 to whether there was any asbestos-containing dust in the  
8 environment, correct?"

9 A. True, because I can't see that.

10 Q. Right.

11 A. Yes.

12 Q. And you're not an epidemiologist, correct?

13 A. No, my answer is none whatsoever. I mean, I couldn't say  
14 that.

15 Q. In fact, you said --

16 A. Or I believe that's what I was saying.

17 Q. In fact, you say, "No, sir, that's not an area that I  
18 have expertise in," correct?

19 A. Yes.

20 Q. So you're not testifying to the court as to whether  
21 asbestos fibers are released, yes or no, that you can't see  
22 when a worker is removing or installing an asbestos-containing  
23 gasket, correct?

24 A. No, that's not what I'm saying. I'm saying that when I  
25 saw the work done or I did it, I didn't see anything.

1 MR. GUY: Thank you, Captain Wasson.

2 THE COURT: Anything else, Mr. Harris?

3 MR. HARRIS: First, Your Honor, if I could offer the  
4 Mil Standard 777. I identified that.

5 THE COURT: All right. We'll admit that.

6 (Debtors' Exhibit No. \_\_\_\_ was received into  
7 evidence.)

8 MR. HARRIS: May I approach the witness?

9 THE COURT: Yes.

10 REDIRECT EXAMINATION

11 BY MR. HARRIS:

12 Q. Captain Wasson, I'm handing you documents that have been  
13 marked. Let me show you this. GST14780, and GST14781, and  
14 GST14782, and GST14783, and GST14784, and GST14785. Can you  
15 tell us what those exhibits represent.

16 A. I believe the 85 one is the 1960 -- no, it's a 1986  
17 edition of Mil Standard 777.

18 The 84 Exhibit Number is the April of '79 edition of Mil  
19 Standard 777.

20 The 83 exhibit is the 1971 edition of Mil Standard 777.

21 And the 82 is the 1968 edition of Mil Standard 777.

22 The Exhibit 81 is the 1966 edition of Mil Standard 777.

23 And the last exhibit, 80, is the 1962 edition of Mil  
24 Standard 777.

25 Q. And are these the mil standards that you reviewed in



1 connection with your report for this case where you identified  
2 the types of gaskets that were used on the different systems  
3 and the different types of metals that were used on the  
4 flanges and fittings?

5 A. Yes, sir. I reviewed all six volumes.

6 Q. All right. And this is -- this was the mil standard that  
7 the navy used beginning in 1961. Is that what you said?

8 A. '62.

9 Q. '62.

10 A. Is when they first started being used.

11 MR. HARRIS: Your Honor, at this time we offer these  
12 exhibits of Mil Standard 777 from 1962 to, I believe, 1986.

13 MR. FINCH: No objection, Your Honor.

14 THE COURT: They're admitted.

15 (Debtors' Exhibits Nos. GST14780 through GST14785  
16 were received into evidence.)

17 Q. Captain Wasson, you were asked about your consultation on  
18 cross examination by Mr. Finch about different defendants that  
19 you've consulted for. And I think you mentioned that you were  
20 asked to consult with a plaintiff's lawyer or plaintiff's firm  
21 at one point; is that correct?

22 A. Yes, I was.

23 Q. Was that -- can you tell us the name of the law firm that  
24 consulted you as an expert witness on matters involving the  
25 navy.

1 A. Yes.

2 Q. Who was the name of that firm?

3 A. It was Waters and Kraus and it was the late Ron Edding.

4 MR. HARRIS: Thank you, Captain Wasson.

5 THE COURT: Anything else?

6 (No response.)

7 THE COURT: All right. I think you can step down.

8 Thank you, Captain Wasson.

9 MR. FINCH: Your Honor, should I just hand up the  
10 demonstrative?

11 THE COURT: Yes.

12 You can step down Captain Wasson.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness stepped down.)

15 (Documents were tendered to the court.)

16 THE COURT: It's quarter of 5:00. Do you want to  
17 start anything else?

18 MR. SCHACHTER: Your Honor, our next witness is --  
19 this is Cary Schachter speaking -- is Dr. David Garabrant. If  
20 the court wants to begin, we'd be glad to start him.

21 THE COURT: I'd say let's begin it and go to 5:15 or  
22 so. We'll have to quit then.

23 MR. SCHACHTER: Thank you, Your Honor.

24 MR. FINCH: My colleague, Mr. Jonathan George, is  
25 going to handle the cross examination of Dr. Garabrant.

1 THE COURT: All right.

2 DAVID HAY GARABRANT,  
3 being first duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCHACHTER:

6 Q. Good afternoon, Dr. Garabrant. Would you please  
7 introduce yourself to the court.

8 A. Good afternoon. I'm David Hay Garabrant.

9 Q. You may need to move the microphone a little closer.

10 A. Is that better?

11 Q. And, sir, what is your medical area of specialty?

12 A. I am a physician in occupational medicine and I also am  
13 an epidemiologist.

14 Q. And the area in which you have taught and researched and  
15 published in the peer reviewed literature is what, sir?

16 A. It's principally in the area of occupational and  
17 environmental epidemiology, largely focusing on occupational  
18 cancer epidemiology.

19 Q. Captain Wasson has just provided the court with an  
20 introduction to the various asbestos-containing materials,  
21 some of which are at issue in this case. Will you be able to  
22 help us understand the various occupations that may have  
23 worked with some of those products and the relative risks of  
24 mesothelioma in those occupations?

25 A. Yes.

1 Q. Let's go through briefly your background so you can --  
2 what did you do?

3 Okay. First of all, you're certified in what fields,  
4 board certified in what fields?

5 A. I'm board certified in internal medicine, preventive  
6 medicine, and occupational medicine.

7 Q. And it says you're a fellow of the American College of  
8 Preventive Medicine and American College of Occupational and  
9 Environmental Medicine. What are those, sir?

10 A. Those are professional organizations or professional  
11 societies in preventive medicine and in occupational medicine.

12 Q. Could you briefly tell us about your undergraduate and  
13 graduate education in medicine, sir.

14 A. Yes. I received my undergraduate degree in chemical  
15 engineering from Tufts University in 1972. I received my  
16 doctor of medicine degree from Tufts in 1976.

17 Upon completing my medical education, I trained four or  
18 five years. First at Georgetown University Hospital in  
19 Washington, DC, for two years in internal medicine. Then I  
20 went to the Harvard School of Public Health in Boston. I  
21 trained in occupational medicine for two years and received a  
22 master of public health degree and a master of science and  
23 physiology.

24 I then completed my senior year of residency in internal  
25 medicine at Boston University Hospital in 1981.

1 Q. Sir, I see that after your internal medicine fellowship,  
2 that's when you went into occupational medicine and  
3 epidemiology; is that correct?

4 A. That's correct.

5 Q. What was it that caused you to decide to become an  
6 epidemiologist?

7 A. When I was a resident in internal medicine, I had the  
8 observation that we were spending a tremendous amount of time  
9 and effort to help -- to save people's lives at the very end  
10 of long diseases and I wanted very much to learn how to  
11 prevent disease and to intervene very early on in the disease  
12 course rather than at the end; and I thought that what we were  
13 doing was not a good use of time compared to trying to do  
14 something more effective to prevent disease. Was very  
15 interested in both cancer and respiratory disease. And I  
16 wanted to go back to public health school to learn about the  
17 causes of disease and disease prevention.

18 Q. After getting that training, did you embark upon a rather  
19 long professional career where you pursued those objectives?

20 A. I've spent my entire career doing exactly those things,  
21 yes.

22 Q. Academically, very briefly, what positions have you held,  
23 sir?

24 A. Well, when I finished my training, I was asked to join  
25 the faculty at the University of Southern California School of

1 Medicine. USC had then, and still has, one of the premier  
2 groups in doing cancer epidemiology research. I was at USC  
3 for seven years. I was promoted to tenure in 1988.

4 I was then recruited to the University of Michigan in  
5 1988 to head the occupational medicine program, which I did  
6 for six years.

7 Then I also took on leadership of the occupational health  
8 program which included occupational medicine and industrial  
9 hygiene.

10 I became the Director of the Center for Occupational  
11 Health and Safety Engineering which then encompassed five  
12 disciplines: Occupational medicine, industrial hygiene,  
13 ergonomics, safety engineering, and occupational health  
14 nursing.

15 I initiated and ran the occupational and environmental  
16 epidemiology program.

17 And with my colleague Martin Philbert, I founded the Risk  
18 Science Center.

19 In 2007 I took emeritus status, meaning that I stepped  
20 down from the tenured faculty and the regents of the  
21 university granted me emeritus status in recognition of my  
22 service to the university.

23 Q. And after you retired with the emeritus status, did you  
24 go off into the sunset or have you done other things?

25 A. No, I truly actually continued doing the same things I

1 was doing prior to retiring. I still had an active research  
2 program so I was still at the university, at first full-time  
3 and then finally tailed that off in January of this year. And  
4 I've also been running my own consulting business.

5 Q. And in the course of that consulting, have you been  
6 called upon to share your knowledge of the data dealing with  
7 the epidemiology of asbestos diseases with courts and juries  
8 over the years?

9 A. Yes, I have.

10 Q. Have you published widely in the academic literature?

11 A. I've published about 200 articles in the peer reviewed  
12 literature. If you add book chapters, letters to the editor,  
13 abstracts, it's probably about 350.

14 Q. And have you published on the subject of asbestos disease  
15 and specifically mesothelioma?

16 A. Yes, I have.

17 Q. During the course of your career, have you received  
18 funding grants from public health agencies that fund research  
19 or training programs?

20 A. Yes. I've received funding from the National Institute  
21 of Health, the National Cancer Institute, NIOSH, the National  
22 Institute for Environmental Health Sciences, the American  
23 Cancer Society, the State of California, and other nonprofit  
24 governmental and private foundations.

25 Q. And we just listed here on your slide a few of some of

1 the agency grants that you've been privileged to work on; is  
2 that correct?

3 A. Yes.

4 Q. Sir, on issues important to worker health, have any  
5 organizations that represent workers called upon you to  
6 perform epidemiological research?

7 A. Yes.

8 Q. And can you tell us about that.

9 A. Yeah. I've done three studies for the United Auto  
10 Workers and Ford Motor Company, National Joint Committee on  
11 Health and Safety. UAW and Ford for many years have had in  
12 their master contract an agreement to set aside funds for  
13 every hour worked by UAW members into a health and safety  
14 fund, some of which is used for research projects. I've been  
15 the principal investigator on three of those.

16 The first was a mortality study of transmission and  
17 chassis workers and stamping plant workers that involved about  
18 53,000 UAW members.

19 The second was a case control study of leukemia and  
20 lymphoma among transmission and chassis workers at the  
21 Sharonville, Ohio, plant essentially working up a cancer  
22 cluster that the workers were concerned about.

23 And the third was a case control study of lung cancer  
24 among UAW and Ford employees in two of their assembly plants  
25 that I did with Elizabeth Delzell at the University of



1 Alabama.

2 Q. So for each of these projects, were you approved by the  
3 UAW to be the person to conduct this research?

4 A. I believe it's fair to say I was asked jointly by the UAW  
5 and Ford to do the work after writing a grant proposal for how  
6 I would conduct the studies.

7 Q. Sir, have you maintained a clinical practice of medicine  
8 during your career?

9 A. I practiced medicine from the time I was an intern  
10 throughout my academic career until two years ago I decided to  
11 stop seeing patients.

12 Q. And in the course of that clinical practice, did you ever  
13 participate in litigation or administrative proceedings in  
14 which workers were seeking compensation for illnesses or  
15 injuries?

16 A. Well, part of my practice was seeing patients in worker's  
17 compensation proceedings in my occupational medicine clinic.  
18 And I routinely testified on behalf of patients I had seen who  
19 I felt had been injured or made ill by their work, yes.

20 MR. SCHACHTER: Your Honor, at this time we offer as  
21 an expert witness in the fields of occupational medicine and  
22 epidemiology Professor Garabrant.

23 MR. GEORGE: No objection, Your Honor.

24 THE COURT: We'll admit him as such.

25 MR. SCHACHTER: Thank you.

1 BY MR. SCHACHTER:

2 Q. We've learned about products and we started off with we  
3 were going to learn about professions or occupations from you,  
4 and I'd like to just get to the meat of the substance of your  
5 opinion.

6 Have you prepared a graph that summarizes the research  
7 that you've done for us in this case and the research that  
8 you've done in other contexts that relate to professions?

9 A. That relate to various occupations and their mesothelioma  
10 risks, yes.

11 Q. And is there a summary chart that shows that?

12 A. Yes, there is.

13 Q. Would you be able to explain that chart to us if I  
14 invited you to come down and --

15 A. Yes.

16 Q. -- if I put it up.

17 There's a microphone, I believe, that they'll hand you.

18 (Witness stepped down from the witness stand.)

19 Q. Doctor, if you would, please, what is this chart and how  
20 do we read it? We're going to go through all the details of  
21 the terminology, but give us enough so we can understand the  
22 general picture here, please.

23 A. Okay. Maybe I better stand over here.

24 What I have done is I have summarized the risk ratios for  
25 mesothelioma in a long list of occupations. And so the

1 occupations are listed along the left side of the chart and  
2 then the relative risks of mesothelioma are shown graphically  
3 towards the right, and then the numbers corresponding to the  
4 graph representations are at the far right.

5 First off, let me say a word about risk ratios. The idea  
6 behind risk ratio is calculating the risk of mesothelioma in  
7 the specific occupation compared to the risk of mesothelioma  
8 in people who do not hold that occupation. And this is done  
9 by pulling together all of the published studies in the  
10 world's literature that have reported the mesothelioma risks  
11 in each of these occupations. So this involves, I don't know,  
12 150 or so different studies that have reported out the  
13 mesothelioma risks.

14 All right. Each of these horizontal lines with a dot in  
15 the middle, the dot represents the relative risk and the  
16 horizontal line represents the 95 percent confidence interval  
17 around that risk.

18 So if you start at the top and look at the relevant risk  
19 in insulators, which I've written as insulation removers and  
20 installers -- for some reason there's -- oh, you have that.

21 Thank you.

22 Q. Will this help you?

23 A. Yes.

24 All right. So the relative risk of mesothelioma in  
25 insulators is about ten fold. That's a very high risk and the

1 95 percent confidence interval goes from 6.3 to 16.3.

2 And carpenters in Great Britain and Australia have about  
3 a seven fold risk and the confidence level goes from about 3  
4 to 16.

5 Q. Please allow me to interrupt you. What is this red line  
6 with the one under it? What does that mean? What's that  
7 level?

8 A. Okay. A relative risk of one means that there is no  
9 association between working in that occupation and risk of  
10 mesothelioma. So in other words, the risk is the same as the  
11 background risk. So this is -- this is our indicator that  
12 there is no association at all between working in that job and  
13 risk of mesothelioma.

14 Q. So why is this helpful to us, this chart, in  
15 understanding the risk of working with asbestos-containing  
16 compressed asbestos sheet gaskets that Garlock --

17 A. Well, what this graph illustrates is that the occupations  
18 that are at significantly increased risk of mesothelioma are  
19 principally the ones in which there is exposure to thermal  
20 insulation. So that's insulators, shipyard workers, plumbers  
21 and pipefitters, boilermakers, sheet metal workers,  
22 electricians, furnace operators, and so on.

23 And when I say that they're at significant increased  
24 risk, we know that because the confidence interval does not  
25 include one. So if the entire confidence interval is above

1 one, that says it's a statistically significant association.

2 When we get down to the bottom, there are a number of  
3 occupations that are not at increased risk of mesothelioma.  
4 They include teachers where the relative risk is .87, and the  
5 confidence interval overlaps one. So that's not significantly  
6 different than one. Sorry, teachers are .91. I can't read at  
7 this angle.

8 Vehicle mechanics, .87. The confidence interval goes  
9 from .66 to 1.15.

10 And office workers and clerical workers, same risks as  
11 vehicle mechanics at .87.

12 Q. Now, you mentioned increased risk. We heard this morning  
13 that all cases of asbestos -- of mesothelioma are caused by  
14 asbestos. Is that true?

15 A. No.

16 Q. Okay. Does it occur in the just general population like  
17 any other cancer, cancer that just occurs?

18 A. There is a background rate of mesothelioma in all  
19 populations. And that means that mesothelioma occurs in all  
20 populations even in the absence of asbestos exposure, yes.

21 Q. Now, back to this graph. Is there any occupation here  
22 that is particularly informative for the issue we're  
23 addressing here of compressed asbestos sheet gaskets and  
24 packing?

25 A. Yes.

1 Q. What is that occupation?

2 A. Well, vehicle mechanics are of particular importance.

3 Q. Why?

4 A. Because vehicle mechanics handle brakes, clutches, and  
5 gaskets and traditionally those products have been made with  
6 chrysotile asbestos. And what this slide points out is that  
7 in spite of doing brake repairs, clutch repairs, and gasket  
8 replacements on motor vehicles, there is no evidence of  
9 increased risk of mesothelioma in that occupation.

10 Q. What are the levels of exposure? How do they -- I'm  
11 sorry, you're not an industrial hygienist. I won't ask you  
12 about levels of exposure.

13 Has the fact that people who work with gaskets in this  
14 context, vehicle mechanics, been the subject of peer reviewed  
15 recent literature explaining that there is no risk of  
16 mesothelioma from such work?

17 A. Well, the results I've put up here represent a summary of  
18 literature from about 17 different epidemiologic studies, and  
19 we'll get into those in detail. But this represents a large  
20 body of research published in the peer reviewed literature  
21 that has looked to see whether vehicle mechanics are at  
22 increased risk of mesothelioma.

23 Q. And in particular, has that been articulated in the  
24 studies and most recently in a study by Rake and Peto in 2009?

25 A. Yes.

1 Q. What is that study and what do they say on the subject?

2 A. This study done by Christina Rake and Julian Peto came  
3 out four years ago now. It's a case control study. I can't  
4 quite read it from here. Occupational, domestic and  
5 environmental mesothelioma risk in the British population, a  
6 case control study.

7 What they did in part was to assemble a large number of  
8 cases of mesothelioma, people who had that disease, and a  
9 random sample of the population of the United -- or Britain  
10 that did not have mesothelioma and they asked them about their  
11 past asbestos exposures at each job. They asked specifically  
12 about work with asbestos insulation board, lighting, spray  
13 coatings, cement, insulation, heat protection materials,  
14 gaskets, textiles, and brake linings. And then for each job,  
15 the duration, description, and occupational code were  
16 recorded, with the frequency of direct and bystander asbestos  
17 exposure.

18 Q. And what was their conclusion that they reached about  
19 that?

20 A. They found that there was no increased risk of  
21 mesothelioma associated with work as a vehicle mechanic -- or  
22 I should say it properly. They found a number of exposures at  
23 work were not associated with increased -- significantly  
24 increased risk. These included vehicle mechanics involving  
25 work with brakes or gaskets. The measure of association was

1 an odds ratio of 0.4 and the 95 percent confidence interval  
2 went from .1 to 1.7. So there was, in fact, a less than one  
3 association that was not significantly different from one.

4 Q. Who are these researchers?

5 A. Julian Peto is quite famous. He is a world-renowned  
6 statistician. In fact, he is one of the earliest creators of  
7 the model that shows the relationship between asbestos  
8 exposure and mesothelioma risk that rises over time with about  
9 the third or fourth power of elapsed time since exposure.

10 Q. Where do they live and who funds this research?

11 A. I believe he's at Imperial College. I believe for a long  
12 time he was at Oxford University. This was funded by, I  
13 believe, the Health and Safety Executive in the United Kingdom  
14 which I -- I'm not sure what it's equivalent to in the United  
15 States. I think it's like the International Institute of  
16 Health.

17 Q. Even if they didn't directly cement on gaskets for  
18 vehicle mechanics, would this study still be relevant to the  
19 issue we're dealing with here of compressed asbestos sheet  
20 gaskets? Would these studies of vehicle mechanics still be  
21 relevant?

22 A. I'm not sure I understand. Your question was even if  
23 they didn't say the word gasket, would it be relevant?

24 Q. Even if we were just looking at vehicle mechanics and  
25 assume they weren't using gaskets, would those studies still



1 be relevant to our issue here?

2 A. Well, I think the importance of studying vehicle  
3 mechanics derives principally from this is an occupation where  
4 people handle brakes and clutches which are incapsulated  
5 asbestos-containing materials. They're chrysotile asbestos  
6 and it is one of the few, perhaps the only occupation in which  
7 there is exposure to chrysotile asbestos but not commercial  
8 amphibole asbestos.

9 Q. And what happens in that population epidemiologically?  
10 Is there an increased risk of mesothelioma?

11 A. If you go back to my previous slide that summarizes the  
12 world's literature on that, the answer is no, there is no  
13 association at all.

14 Q. Dr. Garabrant, you've submitted a report in this case; is  
15 that correct?

16 A. Yes.

17 Q. And it's dealt with a number of subjects. You've gone  
18 through the literature in great detail and you've dealt with a  
19 number of subjects. Because of time, we're not going to be  
20 able to deal with all of those. But tomorrow when we start  
21 afresh, will you be able to help us understand the details of  
22 the terminology used by epidemiology that is going to be cited  
23 by the court?

24 A. Yes.

25 Q. Will you be able to help the court understand in detail

1     what the vehicle mechanics studies show and why they're  
2     relevant?

3     A.    Yes.

4     Q.    And will you be able to elucidate some other  
5     methodological issues related to the issues that we're  
6     addressing here in court?

7     A.    I think so, yes.

8                 MR. SCHACHTER:  Your Honor, I think this would be a  
9     convenient place to stop.  I do have an issue on his report.  
10    We have submitted his report along with the report of all  
11    experts in this case pursuant to our Daubert motions  
12    challenging the scientific reliability of expert opinions  
13    offered by committee experts.  We believe that that report is  
14    in the record already, but at this time I would like to make  
15    sure that we have tendered that report.  And we can provide  
16    the court a copy of that report if you need an additional  
17    copy.

18                MR. GEORGE:  Your Honor, we would object to the  
19    admission of the report into evidence.  It's hearsay.  Classic  
20    hearsay.

21                MR. SCHACHTER:  Under Rule 104 for preliminary  
22    determinations, which is what a Daubert ruling is, it is  
23    precisely the kind of information, especially when we have the  
24    time pressures here where we can't go through each of these  
25    reports in detail.

1           THE COURT: We'll accept it for that purpose and go  
2 on and hear the rest of his testimony tomorrow.

3           MR. SCHACHTER: Thank you.

4           THE COURT: All right.

5           MR. FINCH: One housekeeping matter. Can we just  
6 get a firm list of who they're going to call tomorrow? I  
7 don't want to get short hopped because they've got -- we have  
8 their basic order, but if they pull some people, you know, we  
9 need to have the right boxes of stuff.

10          MR. HARRIS: We plan on calling Larry Liukonen --  
11 does this need to be on the record?

12          THE COURT: No, we can go off the record.

13          (Off-the-record discussion.)

14          THE COURT: All right. I think you can leave what  
15 stuff you want to leave here. It will be locked up. But  
16 otherwise, I guess we'll see you at 8:30 in the morning for  
17 whatever arguments you want to make and then 9:30 to start the  
18 evidence. Thank you.

19          (Evening recess at 5:16 p.m.)

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1       1    UNITED STATES DISTRICT COURT  
2       2    WESTERN DISTRICT OF NORTH CAROLINA  
3       3    CERTIFICATE OF REPORTER

4

5

6       6               I certify that the foregoing transcript is a true  
7       7    and correct transcript from the record of proceedings in the  
8       8    above-entitled matter.

9

10

      Dated this 23rd day of July 2013.

11

12

      s/Cheryl A. Nuccio

13

      Cheryl A. Nuccio, RMR-CRR

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      Official Court Reporter

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